The Solicitors' Journal

Vol. 95 March 31, 1951 No. 13

CURRENT TOPICS

The General Council of the Bar

THE annual statement for 1950 of the General Council of the Bar bears visible testimony of the fruits of the Council's recent reorganisation. A secretary and an assistant secretary now shoulder the burden borne for so many years by Mr. E. A. GODSON, M.C., who has been co-opted a member *honoris causa* of the Council in recognition of his long and meritorious service. As against the increased expenditure resulting from the reorganisation, an income now arises from the new levy on barristers. One hundred and fifty King's Counsel each contributed £5 5s. per annum; 890 juniors of over ten years standing from call contributed £3 3s. each, 85 juniors from the sixth year to the end of the tenth year from call contributed £2 2s. each and 347 juniors to end of five years from call contributed £1 1s. each. The total, including a few sundry subscriptions, was £4,164 16s. 6d. Among a number of points arising out of the Legal Aid and Advice Act, 1949, one of particular interest which is mentioned in the statement is the fact that neither the Act nor the 1950 Regulations made under it deal with what deduction, if any, has to be made from clerks' fees on briefs in legal aid cases. It is observed that normally clerks' fees have to be added to counsel's fees in accordance with the scale in Ord. 65, r. 27 (51) of the R.S.C. The Barristers' Clerks' Association have suggested that their fees should be first taxed on the gross fees payable to counsel and then, like counsels' fees, should be subject to a 15 per cent. reduction. The Bar Council supported this view, which has been accepted.

Home Office Circular 188/1950

THIS circular, which is referred to in the recently issued annual general statement of the Bar Council, is the subject of consultations between the Bar Council and The Law Society, as it would, so the annual statement says, appear to impede the defence in obtaining information as to the character and antecedents of an accused person. The circular is addressed to chief constables and efforts to obtain a copy have thus far been unsuccessful. The document is not available at H.M. Stationery Office, and the Home Office, on inquiry, declined to make a copy available. Apart from certain additional matter, which is presumably the cause of the dissatisfaction entertained by the Bar Council and The Law Society, the circular is understood to follow Circular 187/1950, addressed to Clerks of Assize and Clerks of the Peace. This circular recommends a uniform method of putting before criminal courts the past history of a convicted person. The suggestions, it is stated, have been drawn up by the Director of Public Prosecutions and meet with the approval of the Lord Chief Justice, but they are not to be regarded as rules to be strictly followed, and if any court wishes to follow a different practice from that indicated it is still free to do so. It is suggested that copies of the police officer's dossier should be in the hands of prosecuting counsel

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and that copies should be handed to the court and to defending counsel *after conviction*, and that counsel for the prosecution should examine the officer from this proof in the ordinary way. Two sets of particulars are suggested, one for prisoners over twenty-one, the other for those under twenty-one.

The Income Tax Bill

THE new Income Tax Bill, published on 22nd March, proposes to consolidate the provisions of the Income Tax Act, 1918, with those of some fifty later Acts dealing with the same subject. It will be subject to revision in order to comprise alterations to be introduced by this year's Finance Act. In order to operate for 1952–53 it must be introduced into Parliament this autumn. Codification is not the immediate object of the Bill, but the consolidation which it proposes will be a preliminary to codification. Suggestions for correction or improvement not involving amendments of substance or alterations of wording or arrangement that might change the law are invited, and should be sent to the Secretary, Board of Inland Revenue, Somerset House, before the end of July. No doubt lawyers will be glad to assist in the demise of a monster of legislation by reference, saddened though they may be by the reflection that income tax and income tax law, codified or not, will probably never desert us. The Bill, incidentally, contains 495 pages, 529 clauses and 25 schedules.

Legal Aid and the Court of Criminal Appeal

IN the Court of Criminal Appeal on 19th March (*The Times*, 20th March), the LORD CHIEF JUSTICE had sharp words for appellants who spoke ill of counsel allotted to them for the conduct of their defence. He said : " In these days when there is so much talk about legal aid I find that there is very little gratitude among persons who get aid in putting their defence to the court. One of the commonest things put forward in cases which come before us is an attack on the counsel who defended the accused person. It is extraordinary that, according to the accused, their counsel has never done anything right. Complaint is made that counsel wrongly advised a plea of ' guilty,' or that he did not tell the judge something which he should have told him, or that he did not call some witness. I am beginning to believe that it would be far better to leave many of these people to defend themselves. They would then be able to say all they want to say. Very often counsel quite wisely do not put forward everything which they are asked to put forward." It is not generally realised by the public that the art of successful advocacy consists as much in keeping silent at the right time as in talking at the right time. Nowhere is this more true than in the criminal courts.

Trial Judge as Member of Appellate Court

IT is not a novelty in jurisprudence for a trial judge to sit with an appellate court hearing an appeal from a case tried before him. Students of the reports will find frequent instances occurring in the last century. It remained for the present Court of Criminal Appeal to consider whether it is allowable in modern times. On an application for leave to appeal on 19th March, (*The Times*, 20th March) the LORD CHIEF JUSTICE said that it had undoubtedly been the practice, if the trial judge was sitting in that court, to adjourn, and the question was whether that practice need be followed in all cases in the future. Occasionally it was undesirable that the trial judge should sit on an appeal. It all depended on the nature of the appeal. Where the appeal was simply based on arguments to the effect that the verdict of the jury was wrong, that had nothing to do with the judge and it was quite immaterial whether or not the judge who tried the case happened to be a member of the Court of Criminal Appeal before whom the case came, because that court did not interfere with the verdict of juries, provided that there was evidence to support their verdict, and no misdirection by the judge was alleged. There might be cases when it would be desirable that the trial judge should not sit, but where the ground of appeal was nothing but an argument that the verdict was a wrong verdict there was no reason whatever for saying that the trial judge should not sit on the appeal and, in fact, in some cases it might be very useful that he should do so.

Recent Decisions

In *Simpson* v. *Simpson*, on 19th March (*The Times*, 20th March), a Divisional Court (the PRESIDENT and KARMINSKI, J.) held that where justices found that a husband's conduct constituted persistent cruelty in keeping his wife short of money, closing her accounts at shops and keeping food locked away, being unfriendly and telling her more than once to go, the Divisional Court would not interfere, the case being one in which the justices had directed themselves correctly on the law. It was held that if the husband's conduct were held to be of sufficient gravity, although it might be said to be a manifestation of his own character, it should be held to be " aimed at " the wife and he should be taken to have intended the danger to her mental health.

In a case before JONES, J., on 19th March (*The Times*, 20th March), it was held that the words " personal injuries " in an insurance policy included death following on personal injuries, and that the words " over the age of sixty-five years " applied to anyone who had lived beyond the attainment of his sixty-fifth birthday.

In a case before PILCHER, J., on 19th March (*The Times*, 20th March), it was held that, following Ord. 64, r. 13, of the Rules of the Supreme Court, which was incorporated into the Matrimonial Causes Rules, 1950, by virtue of r. 80 thereof, a party to a matrimonial suit must give one month's notice to the other party of his or her intention to proceed with the suit in any case where the proceedings had been dormant for a year or more.

In *National Coal Board* v. *Amalgamated Anthracite Collieries Ltd.*, on 21st March (*The Times*, 22nd March), the Court of Appeal (SOMERVELL and DENNING, L.JJ., SINGLETON, L.J., dissenting) held that, where a workman in the employment of the National Coal Board was certified on 20th October, 1947, under s. 43 of the Workmen's Compensation Act, 1925, as suffering from miner's nystagmus, the National Coal Board were not entitled to contribution from the colliery company which employed the workman immediately before the vesting date, 1st January, 1947, on which its undertaking became vested in the Board, because there was nothing in the Coal Industry Nationalisation Act, 1946, to bring into play s. 43 (1) (*c*) of the Workmen's Compensation Act, 1925, as between the Board and the company, and under the terms of reference to a tribunal set up under the 1946 Act to determine the aggregate amount of compensation to be made in respect of the transferred interests, the cost of workmen's compensation would already have been debited against the coal industry as a whole in computing its net annual revenue.

OWNERSHIP AND THE SALE OF GOODS

THE essential function of law is to resolve conflicting interests, and, what is more, the conflict is commonly one between two innocent parties whose claims are equally meritorious. One manifestation of this problem operates in the realm of title to goods when a rogue has obtained them from one and sold them to the other. On what principle is such a conflict to be resolved? As often as not the answer must be to some extent arbitrary, for if the claims are equally meritorious the decision must be based on some factor which the parties did not foresee or allow for. It becomes a matter for express warranties, careful inquiry, or insurance, or the like. So long as the commercial community knows the risks it can carry on. As Vaisey, J., said in the recent case of *Pearson* v. *Rose and Young, Ltd.* (1950), 94 SOL. J. 778; 66 T.L.R. (Pt. 2) 886, at p. 895, "Where there are two innocent parties of whom one has to suffer for the criminal act of a third, no decision can be said to be satisfactory."

There have been several cases involving this problem over the last year or so. A good statement of the general principles was given by Denning, L.J., in the above-quoted case of *Pearson* v. *Rose and Young, Ltd.*, at p. 892, where his lordship pointed out that in the early days of the common law the governing principle was that no person could give a better title than he himself had got, but that the needs of commerce have led to a progressive modification of that principle so as to protect innocent purchasers, either by such common-law devices as "market overt" or by such statutory protection as is afforded to sales by sheriffs and sales by mercantile agents. Nevertheless, the true owner is protected by making it clear that, for example, in the case of a sale by a mercantile agent, the owner does not lose his goods unless he consented to the other's possession of them, so that he could reclaim them if they were stolen from him and then sold by a mercantile agent, even to an innocent purchaser. But where he does consent to the agent's possession he clothes him with apparent authority to sell them.

The facts in this case were that the plaintiff left his car with a dealer for repairs and for display purposes with a view to getting offers, but not with any actual authority to conclude a sale. The dealer did sell and the court found that he intended from the start to sell, and was therefore apparently guilty of larceny by a trick. It has never been decided whether, where goods are obtained by a mercantile agent in circumstances amounting to larceny by a trick, there is the necessary consent of the owner to possession by the agent within s. 2 (1) of the Factors Act, 1889, whereby such an agent can confer a good title on an innocent buyer. This point cannot yet be regarded as settled, as the case was decided on another point, namely, that the sale by the agent must be "in the ordinary course of business," and it was held that in the circumstances of this case it was not in the ordinary course of business, for reasons to be explained.

On this question of consent to possession by the agent guilty of larceny by a trick, it might at first seem obvious that there is no consent to a thief's having possession, but, of course, this is not so if only because of larceny by bailees, fraudulent conversion and the like. In larceny by a trick there is a consent to possession just as there is in the case of the bailee (though there is not consent to the passing of property as there is in the offence of obtaining by false pretences), for the purpose of the trick is to obtain such possession by consent. But in order that a mercantile agent may have such possession as enables him to confer a good title, the owner's consent to his possession must be a consent to his possession as such agent, and not, for example, to possession in some other capacity, such as a repairer or hirer (*Oppenheimer* v. *Frazer* [1907] 2 K.B. 50; *Staffs Motor Guarantee, Ltd.* v. *British Wagon Co., Ltd.* [1934] 2 K.B. 305, at p. 313). In *Oppenheimer* v. *Fraser*, at p. 71, the view was expressed that in the case of larceny by a trick (or of any kind) there was not sufficient consent for a mercantile agent to pass a good title to an innocent purchaser, but in *Folkes* v. *King* [1923] 1 K.B. 282, at p. 297, the opposite view was expressed. In the case under review, both Somervell, L.J., and Denning, L.J., accepted the view in *Folkes* v. *King* that there could be sufficient consent to the mercantile agent's possession for the conferring of a good title in spite of the crime. Equally, it was pointed out, and for that matter conceded by counsel, that it had been decided in earlier cases that where there was fraud, although that was said to negative consent, the transaction is only voidable, not void, and so a good title can be conferred if the contract has not been avoided at the time of the sale; and the court expressed the view that Parliament did not intend to apply the artificial distinctions of the criminal law to a commercial transaction. We have therefore, quite a strong *obiter dictum* by each lord justice, to the effect that an owner cannot recover goods sold by a mercantile agent solely on the ground that they were obtained from him by an act amounting to larceny by a trick.

There was, however, another point, and that was the all-important log book of the car, or registration book. This was handed to the dealer by the owner (at the time of delivering the car for repair and display), for a mere inspection in order to prove a point of argument as to the car's history: the dealer was given the barest custody, there being no consent to his having possession of it. By another trick the owner was called away so as to forget about the book for the time being, and the agent promptly sold the car that day with the log book.

This was the vital factor in the decision, for the Court of Appeal held that the sale of a car without its log book is not a sale "in the ordinary course of business" within s. 2 (1) of the Factors Act, 1889, and therefore to confer a good title the agent must possess the book with the consent of the owner, just as much as he must possess the car, and, of course, both must be possessed as a mercantile agent. In the result the plaintiff succeeded in his claim in detinue against the then possessor of the car.

It was said again, as it had been held in *Joblin* v. *Watkins and Roseveare (Motors), Ltd.* (1948), 64 T.L.R. 464, that the registration book of a car is not a document of title to the car, so that the transfer of the book does not automatically transfer the property in the car. But it is the best evidence of the title, as Scrutton, L.J., had observed twenty-seven years earlier, and he added that the courts might have to take adverse notice of a sale without the log book (*Folkes* v. *King, supra*, at p. 300). Nevertheless, though it is not the document of title, it has more than once been suggested that the fact that the car is subject to a hire-purchase agreement ought to be entered on that book (see, for example, *Norman* v. *Pitt* [1948] W.N. 270; 92 SOL. J. 514 (C.A.)).

There is only one postscript to be added on this case, and that refers to a remark of Denning, L.J.'s to the effect that he came to his conclusion with reluctance (particularly in view of the provision of s. 2 (4) of the Act, by which consent to possession is presumed unless there is evidence to the contrary), but that his reluctance was tempered by the reflection that the buyer from the agent was himself a dealer who had made a high profit; such a person, added his lordship, must not be surprised if he occasionally gets his fingers burnt.

This must be taken merely as an expression of the belief that in the particular case the rule had not worked an injustice. The rule is that the presumption operates " unless there is evidence to the contrary," not " unless the contrary is evident to the purchaser," and clearly has the effect of simply shifting the onus of proof of any such evidence from the defendant to the plaintiff.

It has always been dangerous to attempt to decide civil actions by analogy with principles of criminal law, for reasons which, in some cases at any rate, are bound up with the historical development of the criminal law, and this is particularly applicable to larceny. Thus, the " welshing " bookmaker has been held to be guilty of larceny by a trick (*R.* v. *Buckmaster* (1887), 20 Q.B.D. 182), which involves the proposition that the punter intended to give him only custody or possession of the coins, and not the ownership of the coins (otherwise the offence would be obtaining by false pretences). Yet it seems that the transaction, from the civil point of view, is a contract (true, a void contract because of s. 18 of the Gaming Act, 1845) to pay a sum on an uncertain event, but not to hand back the original coins as any part of that sum, and so the opposite view of the passing of property obtains in a civil action from that in the criminal action. As it happens, this is not now important because of the power of alternate convictions.

The second case worthy of mention is *Curtis* v. *Maloney* (1950), 94 SOL. J. 761 ; 66 T.L.R. (Pt. 2) 869, in which the Court of Appeal recently affirmed the decision of Finnemore, J. This was concerned again with the interpretation of a statute protecting purchasers where there would be no protection at common law. In this case the point which arose must be ascribed to the unsatisfactory wording of the statute. The court, in effect, decided that the word " purchaser " had been left out of s. 15 of the Bankruptcy and Deeds of Arrangement Act, 1913, as indicated in square brackets below. The section concerns a sale by the sheriff under execution and provides that the purchaser shall acquire a good title, but there is a proviso that nothing in the section shall affect the right of any claimant who may prove that at the time of sale he had a title to the goods to any remedy to which he may be entitled against any person " other than such [purchaser] sheriff, high bailiff or other officer as aforesaid."

As stated above, the word " purchaser " is not there, but Somervell, L.J., expressed the opinion that if the purchaser is not protected the provision simply contradicts the first part of the section, and so, although the word does not appear in the section, it was construed as though it were there. There was much speculation as to why the proviso was there anyway. The reasons advanced were various, Finnemore, J., having culled various reasons from legal text-books, as well as one expressed by McCardie, J., in *Jones* v. *Woodhouse* [1923] 2 K.B. 117, at p. 126. The view which prevailed was that the purpose of the proviso was to protect a claim by the owner against the judgment creditor for the proceeds of sale. As Denning, L.J., emphasised, it is important to the commercial world that such protection should be given against the common-law rule.

There are, of course, other cases where the general common-law rule, that no man can give a better title than he has, does not prevail, for example, masters of ships acting in an emergency ; innkeepers who sell goods left with them ; negotiable instruments transferred to a holder in due course ; and sales in market overt. On the last point there was a case not long ago, *Bishopsgate Motor Finance Corporation* v. *Transport Brakes* [1949] 1 K.B. 322, on which see 92 SOL. J. 185. It will be remembered that a sale by a thief in market overt does not pass the property to an innocent purchaser for value once the thief has been prosecuted to conviction, for the goods then re-vest in the owner by virtue of the Larceny Act, 1916, and the Sale of Goods Act, 1893, and so this differs from the case of a mercantile agent who steals the goods where he gets possession by consent, but the difference is, of course, due to the manner of obtaining possession. It is interesting to speculate on what would be the position if the goods were sold in market overt by a bailee or by a person who obtained them by larceny by a trick. Since the Larceny Act, 1916, speaks of embezzling and converting as well as stealing, presumably the position is the same. But if goods are obtained otherwise than by larceny, e.g., by fraud, and then sold in market overt, they do not re-vest in the owner on conviction, and so there is here a distinction between fraud and larceny which there apparently is not in the case of a sale by a mercantile agent.

L. W. M.

POST-NUPTIAL SETTLEMENTS

THE question of what constitutes a post-nuptial settlement frequently arises for consideration. In *Halpern* v. *Halpern* [1951] 1 All E.R. 315 ; 95 SOL. J. 123, the parties were married in March, 1942, and the marriage was dissolved on 16th May, 1950, on the wife's petition. In November, 1942, the petitioner's father purchased a freehold property in Scotland in the petitioner's name and expressly directed that the title deeds should be completed in her name. On 5th July, 1945, the petitioner, for no stated consideration, conveyed a half share in the property to the respondent. It was stated in an affidavit by the petitioner that that was done at the respondent's request so that he could hold the property jointly with her and thus have a better opportunity of obtaining naturalisation. The house was in fact not the matrimonial home. The petitioner contended that the above conveyance was a post-nuptial settlement within the meaning of s. 192 of the Supreme Court of Judicature (Consolidation) Act, 1925, and took out a summons to vary the settlement by expunging the respondent's interest therein. The respondent contended that the deed of conveyance was not a settlement and therefore could not be varied, and the learned registrar in his report upheld the respondent's contention. In accordance with the practice the application was then referred to the judge.

Before stating the answer to the problem in the above case, let us examine the existing law on the subject. The power of the court to make orders as to the application of settled property was found in s. 192 of the Supreme Court of Judicature (Consolidation) Act, 1925 (now replaced in identical terms by s. 25 of the Matrimonial Causes Act, 1950), which enacted that " The court may after pronouncing a decree for divorce or for nullity of marriage enquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or any part of the property settled either for the benefit of the children of the marriage or of the parties to the marriage, as the court thinks fit, and the court may exercise the powers conferred by this subsection notwithstanding that there are no children of the marriage." So far as case law is concerned it is not really satisfactory to go too far back or too far into the detail of old cases decided under the corresponding

provisions of s. 5 of the former Matrimonial Causes Act, 1859, as the modern conception of what constitutes a " settlement " in this connection has greatly extended the earlier views of the meaning of that term. As Romer, J., sitting in the Court of Appeal, said in *Bosworthick* v. *Bosworthick* [1927] P. 64, at p. 72 : " I do not think that we get any assistance from the Settled Land Act or the Bankruptcy Act, or from the way in which the word ' settlement ' is usually employed by conveyancers. What we have to do is to consider the meaning of the word in these particular sections " (i.e., s. 5 of the Matrimonial Causes Act, 1859, and s. 192 of the Supreme Court of Judicature (Consolidation) Act 1925). " We have had numerous authorities cited to us going as far back as 1861 . . . and in my judgment those authorities establish that where a husband has made a provision for his wife, or a wife for her husband, in the nature of periodical payments, that amounts to a settlement within a meaning of the sections." In that case a wife married in 1897 and, possessing a life interest in considerable property under a settlement made by her uncle and his will, by a bond dated 23rd December, 1902, secured to her husband an immediate annuity of £300 for life, and by a deed poll dated 30th January, 1903, appointed to him a reversionary annuity, expectant on her death, of £600. On 12th January, 1925, the marriage was dissolved on the wife's petition on the ground of her husband's adultery. The wife then petitioned for an order extinguishing her liability under the bond and her husband's interest under the appointment. There were some arrears due to the husband under the bond. It was held by the Court of Appeal (Lord Hanworth, M.R., Scrutton, L.J., and Romer, J.), affirming Lord Merrivale, P., that although the bond did not involve the settlement of property, or a charge on property, for successive interests, it nevertheless amounted to a post-nuptial settlement within the meaning of the above sections, and that the court had power, consequent upon the dissolution of the marriage, to deal with the bond and discharge it. In *Prinsep* v. *Prinsep* [1929] P. 225, Hill, J., further emphasised the wide meaning to be ascribed to the term " settlement." The learned judge said that the material question is whether the settlement in question is upon the husband in the character of husband or on the wife in the character of wife or upon both in the character of husband and wife. Mere form is immaterial. The settlement may be one in the strictest sense or it may be, for instance, a covenant to pay by one spouse to the other or by a third party to a spouse. What is material is that the settlement should provide financial benefit for one or other or both of the spouses as spouses and with reference to their married state. The high-water mark of the meaning of " settlement " was probably reached in *Smith, C. H.* v. *Smith, E.* (1945), 61 T.L.R. 331. On 4th November, 1933, a house was bought in the joint names of the parties, and the conveyance also stated that they were to stand possessed of it " upon trust to sell the same with power at discretion to postpone any sale " and to stand possessed " of the net proceeds of sale " and " of the net rents and profits until sale in trust for the husband and wife as joint tenants beneficially." The husband and wife entered jointly and severally into covenants with the vendor restricting the use of the house. The greater part of the purchase price was raised from a building society on a mortgage of the house, by which husband and wife were jointly liable for the repayments and for performance of the covenants. The moneys for the purchase were provided solely by the husband, who paid off the mortgage by instalments, the final repayment being in February, 1940. On 16th August, 1944, a decree absolute was pronounced dissolving the marriage on the husband's petition. On an issue being tried on the plea of the respondent (the wife) that the conveyance was not a settlement within the meaning of s. 192 of the Supreme Court of Judicature (Consolidation) Act, 1925, but was a gift, it was held by Denning, J., that the freehold house was a continuing provision for the future needs of both husband and wife in their character as such, and, therefore, a post-nuptial settlement within the meaning of the section. In the course of his judgment (at p. 332) the learned judge emphasised that the principle running through the cases is that, where a husband makes a continuing provision for the future needs of his wife, in her character as a wife, which is still continuing when the marriage is dissolved, the provision is a " settlement " which can be brought before the court to see whether the provision should continue now that she has ceased to be a wife. The same applies to a provision by a wife for her husband, or by each or either for both. The provision usually takes the form of periodical payments either with the intervention of trustees, as in an ordinary marriage settlement, or without them, as in a separation deed or a bond ; but it may take other forms. The transfer of an investment into a wife's name, whether it be a house or shares or an annuity, is in its nature just as much a continuing provision for her future needs as is a periodical payment. The fact that it is made for no consideration other than natural affection, and is in that sense a gift, does not mean that it is not a " settlement." Again, the fact that it is assignable does not mean that it is not a " settlement." A wife is often free to assign her interest under an ordinary marriage settlement or a separation deed, but it is none the less a " settlement." Denning, J., also made the important observation that he found it difficult to reconcile the decisions in *Hubbard (otherwise Rogers)* v. *Hubbard* [1901] P. 157 and *Brown* v. *Brown* [1937] P. 7 with the principle that ran through the cases on this subject. In *Hubbard (otherwise Rogers)* v. *Hubbard, supra,* the husband had assigned to a trustee a leasehold house and some furniture on trust absolutely for his wife, and the trustees assigned the same accordingly. The wife having obtained a decree of nullity, the Court of Appeal held that the assignment was not a settlement within s. 5 of the Matrimonial Causes Act, 1859. In *Brown* v. *Brown, supra,* a wife had purchased an annuity and the society granting the annuity had covenanted to pay the annuity to the husband or his assigns. The wife had parted with her money and there was no possibility of anything coming back to her under the terms of the transaction, and the court held that that could not be a settlement within the meaning of s. 192 of the Supreme Court of Judicature (Consolidation) Act, 1925.

A reference to two cases decided recently will close our investigations. In *Gunner* v. *Gunner and Stirling* [1949] P. 77, by the terms of an insurance policy effected by a husband upon his life, the payees were identified as " the person or persons entitled under the Married Women's Property Act, 1882, to receive the policy moneys," and the insurance was effected under the provisions of that Act for the benefit and separate use of the wife of the assured absolutely. The marriage was subsequently dissolved because of the wife's adultery, and the husband sought to vary the provisions of the policy. Wallington, J., took the view that the policy was a policy which was taken out by the husband at a time when he had no reason to suppose that there would be any likelihood of the marriage being dissolved ; the husband had effected the policy in order that he might by periodical payments be able at the expiration of the period mentioned in the policy to make a provision to the extent of a stated sum (which was in fact £5,000) for his wife, because she was his wife, and because for that reason he desired that he should

make provision for her. Accordingly the policy was a post-nuptial settlement which the court could vary under s. 192 of the Supreme Court of Judicature (Consolidation) Act, 1925. In *Bown* v. *Bown and Weston* [1949] P. 91 the marriage took place in 1913, and in 1921 the husband took out a policy of insurance with the Canada Life Assurance Company, whereby that company undertook, in consideration of a single premium of £1,020, to pay the sum of £2,082 with profits on the death of the assured; with all accrued benefits the policy was worth some £2,960 by the end of 1947. The beneficiary was described "as the wife of the assured, beneficiary during her lifetime." The marriage was subsequently dissolved because of the wife's adultery. The husband applied to have the settlement varied and asked that the respondent's (the wife's) rights should be extinguished as if she were dead. Wallington, J., said that the policy was taken out by the husband for the benefit of his wife in the limited sense indicated in the policy, i.e., on the issue of the policy the wife attained an immediate vested interest in whatever rights were conferred upon her by the policy, but those rights were and still remained contingent upon her surviving the assured (the husband), an event which was impossible to ascertain, and therefore an event which must be awaited. This case did not depend upon the existence of a trust because the policy was not issued under s. 11 of the Married Women's Property Act, 1882. But the absence of a trust made no difference to the result of the transaction, which was to create a settlement within the provisions of s. 192 of the Supreme Court of Judicature (Consolidation) Act, 1925, and accordingly the settlement could be varied as prayed by extinguishing the respondent's rights as if she were dead.

Thus fortified by recent authority on the subject, let us now return to *Halpern* v. *Halpern*, which gave rise to our consideration of the above matters. Collingwood, J., said that in his opinion that case came within the wide definition of "settlement" given by Denning, J., in *Smith* v. *Smith, supra*. The conveyance by the petitioner to the respondent was for the purpose of making provision for him, and it did not matter that the house in question was not in fact the matrimonial home. It was a conveyance by the wife to the husband because he was her husband and with a view to the continuance of the matrimonial relationship between them, and it constituted a settlement within the meaning of s. 192 of the Supreme Court of Judicature (Consolidation) Act, 1925. Accordingly the settlement would be varied as prayed and the right of the respondent expunged.

M.

Costs

APPEALS—III

WE have been considering in the last two articles the incidence of costs in respect of appeals to the Court of Appeal, and have touched on the matter of security. We will now turn our attention to the question of amount.

As in the case of costs in any other branch of the law, before one can compile properly a bill of costs it is necessary to know something of the details of practice relating to that branch, and we will consider those in respect of appeals as we proceed.

In the first place, it will be found that R.S.C., Ord. 65, r. 8, provides that "in causes and matters commenced after these rules come into operation" solicitors shall be entitled to charge the fees set forth in the column headed "lower scale" in App. N to the rules. Precisely what is meant by the term "causes and matters" is not defined in the rules, but it may be inferred that the term is intended to include all proceedings in the Supreme Court to which the rules apply. Accordingly, since the Rules of the Supreme Court apply to appeals to the Court of Appeal, it may be assumed that the costs in relation to such appeals should be compiled according to the fees set out in App. N to those rules.

The costs in relation to appeals will be compiled according to the lower scale of App. N and the higher scale will only apply where there are special grounds. We have considered the principles upon which the higher scale will be applied in an earlier article, and it is not proposed to go over that ground again at this juncture.

In considering the allowances that will be made in respect of an appeal to the Court of Appeal we will, in the first place, consider the case of the party who has been unsuccessful in the lower court and who wishes to take the case to the Court of Appeal.

It may, of course, be necessary to apply to the court for leave to appeal, and this will have to be done by counsel. It is not usual to pay counsel a fee much in excess of two guineas, and the application will therefore only entail a brief to counsel to attend and attendance at the application. The total solicitor's fees would not amount to more than three or four guineas with a fee of two guineas for counsel.

The next item in the solicitor's bill of costs will be "Instructions to Appeal," and a fee of 13s. 4d. is allowed for this under item 75 of App. N, and 1s. per folio is allowed for drawing the notice of appeal under item 52. If there are special features about the notice then an allowance will be made for counsel to settle it. Indeed, a fee to counsel to settle the notice of appeal will normally be allowed notwithstanding that the notice may be in common form (see *Re Bailey; Bailey* v. *Bailey* (1908), 53 SOL. J. 522). The fee allowed to counsel will not usually exceed one guinea. In order to settle the notice of appeal counsel will require to be provided with a copy of the judgment or order appealed from, and to this will be added the papers formerly before counsel in the lower court. In addition, it may be found necessary to provide counsel with a transcript of the judgment and possibly of the evidence, but the costs of supplying these documents will only be allowed once in connection with the appeal, and if they are charged in the solicitor's bill of costs as part of the costs in connection with the notice of appeal, then they cannot be charged for again when it comes to the fees for the brief to counsel on the appeal.

When the notice of appeal is settled a copy will be made for service on the respondent's solicitors, and the allowance for this is the normal 4d. per folio, with a fee of 2s. 6d. for service. On the entering of the appeal, an office copy of the judgment appealed from will have to be produced and a further copy of the judgment will have to be lodged with two copies of the notice of appeal. The court fee on entering the appeal is £2 if the appeal is entered in the interlocutory list, and £5 if entered in any other list, whilst a fee of 6s. 8d. will be allowed to the solicitor for attending to enter the appeal. Including the increase in the solicitor's fees of 50 per cent. authorised by R.S.C., Ord. 65, r. 10, the solicitor's charges for preparing, settling and attending to lodge a notice of appeal and serving a copy on the respondent's solicitors, assuming the documents are of normal length, would thus be about two guineas, whilst counsel's fees and court fees, in respect of a final appeal, would be about £8.

When the appeal has been set down, the next step is to ensure that the Court of Appeal is supplied with the necessary

documents. One of these will be the judge's notes taken in the court below. Formerly, a transcript of the actual notes taken by the judge was bespoken and copied for the Court of Appeal, and this procedure will still apply where the judge intimates that his notes will be sufficient. Inasmuch as an official shorthand writer now attends in court, however, and takes a note of the evidence, the summing up and the judgment, it is not unusual for the judge to abandon the laborious practice of taking notes, with the result that the notes of the official shorthand writer will be used in the Court of Appeal.

The procedure now is for the appellant to bespeak three copies of the shorthand writer's notes, the costs of which he will have to bear and which will form part of the appellant's costs of the appeal. The transcripts are sent direct by the official shorthand writer to the Court of Appeal. In order to limit the costs of the appeal it may be agreed between the parties that some part of the evidence is not required for the purpose of the appeal, or, on the other hand, it may be that the judge will direct that some part of the evidence is unnecessary for that purpose, and in such cases the appellant will not, of course, order the official shorthand writer to supply that portion of the evidence. In any case, it may be that the Court of Appeal will decide that some of the evidence is not required on the appeal and should not, therefore, have been ordered, and it may then disallow the cost thereof (see *Lyus* v. *Stepney Borough Council* [1941] 1 K.B. 134).

In addition to the transcript of the evidence, the summing-up and the judgment, there must be supplied for the use of the Court of Appeal three copies of the pleadings, the judgment appealed from, and any other papers and correspondence that may be necessary for the purpose of the appeal. This does not necessarily mean that three copies of the whole of the documents used in the court below will be required, since some of these may not relate to the point under appeal, and it is usual to agree with the adverse solicitors what documents shall be supplied. The cost of these three copies of documents will be allowed in the appellant's solicitor's bill of costs at the rate of 4d. per folio for each copy, provided they are all " top " copies. In addition to these documents two copies only of any affidavits filed as evidence in the lower court will have to be made for the use of the Court of Appeal, also at 4d. per folio for each copy. Only two copies are required, since it will be necessary to bespeak the original affidavits that have been filed for the use of the Court of Appeal. A fee of 6s. 8d. will be allowed for lodging the copy documents in the Court of Appeal, and a fee of 3s. 4d. for bespeaking the original affidavits.

Soon after the service of the notice of appeal the respondents may apply for security on any one of the various grounds which were considered in our last article. As we noticed there, the application in the first place should be made by letter by the respondent's solicitor to the appellant's solicitor. If security is refused by the appellant then a motion will be set down, and a copy of the notice of motion will be served on the appellant's solicitor. The latter will also be served with notice that an affidavit has been filed in support, a copy of which he will purchase at the usual rate. The appellant's solicitor will be entitled to nothing for perusing the notice of motion, but he may charge in his bill of costs the usual fee of 4d. per folio for perusing the affidavit in support.

The motion will be attended by counsel, and 1s. 4d. per folio will be charged for drawing the brief to counsel and 4d. per folio for copying the notice of motion and the affidavit and any other necessary documents for counsel's use on the hearing of the application for security. Nothing will be allowed for instructions for brief. A fee of one guinea is usually allowed for attending the motion for security with counsel. If an order for security is made, then a fee of 13s. 4d. will be allowed for attending on the client and obtaining the amount of the security ordered, and for attending and paying the amount into court. Notice of payment-in is given to the other side, for which the customary fee of 4s. is allowed to cover the notice and the service thereof, and a further fee of 3s. 4d. for attending on the cause clerk and producing the receipt in order to have the stay removed.

All that remains now is to prepare the brief to counsel to attend the hearing of the appeal. In this respect, all that is allowed is the normal fee for drawing the brief and copying the necessary documents, and for attending counsel with the brief and documents. It will be observed that no fee is allowed for instructions for brief on appeal, nor will anything be allowed for copying any documents other than those mentioned above, since counsel will use the documents that he had with his brief in the lower court. So far as counsel's brief fee is concerned, it is customary to allow the same fee as he had in the court below (see *Sturgis* v. *Morse* (*No. 2*) (1859), 26 Beav. 582, and *Sunnucks* v. *Smith* [1950] 1 All E.R. 550). A fee will also be allowed to junior counsel to attend to hear the judgment in cases where the judgment is delivered in a later term than that in which the hearing of the appeal took place.

The appellant's solicitor will be allowed three guineas for attending the hearing of the appeal, if a full day is occupied, and the usual fee of 6s. 8d. for attending to obtain the order of the Court of Appeal. A copy of the latter will be allowed for service on the other side, and 2s. 6d. for service thereof.

We will consider the question of estimating the probable cost of an appeal and other points in our next article.

J. L. R. R.

A Conveyancer's Diary

SOME AUTHORISED MODES OF APPLYING CAPITAL MONEY UNDER THE SETTLED LAND ACT

One of the modes of applying capital money authorised by s. 73 of the Settled Land Act, 1925, was originally stated as follows (s. 73 (1) (iv)) : " In payment as for an improvement authorised by this Act of any money expended and costs incurred by a landlord under or in pursuance of the Agricultural Holdings Act, 1923 . . . in or about the execution of any improvement comprised in Pt. I or Pt. II of Sched. I to that Act." As a result of subsequent legislation on agricultural holdings, s. 73 (1) (iv) of the Act of 1925 reads rather differently to-day ; and it was with both the vicissitudes that this provision has undergone and its present-day effect that the principal question which arose in *Re Duke of Northumberland* [1950] 2 All E.R. 1181 ; 94 Sol. J. 805, was concerned.

First, as to the vicissitudes. The Agriculture Act, 1947, repealed considerable portions of the Agricultural Holdings Act, 1923, but many of the provisions of the earlier Act were re-enacted with or without substantial modification by Pt. III of the Act of 1947. Part III of the Act of 1947 was then itself repealed by the Agricultural Holdings Act, 1948, which was a consolidating measure and which re-enacted

Pt. III of the Act of 1947 with immaterial modifications. It is therefore permissible, for the present purposes, to disregard the effect (temporary as it was) of the Act of 1947 on the Settled Land Act provisions with which the decision under review was concerned, and pass straight on to the Act of 1948.

By s. 96 (1) of the Act of 1948 references to Pt. I and Pt. II of Sched. I to the Act of 1923 (the parts of the Act referred to in s. 73 (1) (iv) of the Settled Land Act) are now to be construed as references to Sched. III to the Act of 1948, and to Pt. II of that Schedule respectively, and para. 23 of Pt. II of that Schedule includes "repairs to fixed equipment, being equipment reasonably required for the proper farming of the holding, other than repairs which the tenant is under an obligation to carry out." It may thus be noted that the repairs referred to in para. 23, if this paragraph is read by itself, clearly envisage repairs to premises comprised in a holding let to a tenant; and this is no matter for surprise, since the whole of the 1948 Act is concerned with the relationship and the respective rights and liabilities of a landlord and a tenant of an agricultural holding. These observations, indeed, would appear at first sight to be self-evident; but they are not without point, as will be seen.

The last of the statutory provisions relevant to the question under discussion is s. 81 (1) of the Act of 1948, which provides, in effect, that where, under powers conferred by the Settled Land Act, 1925, capital money is applied in the execution of any improvement specified in Sched. III to that Act, it is not necessary for any of the money expended on any such improvement to be replaced out of income, and accordingly any such improvement is to be deemed to be an authorised improvement within the meaning of the Act of 1925.

The broad effect of all these changes, so far as we are immediately concerned, is to make repairs to fixed equipment, as defined in para. 23 of Pt. II of Sched. III to the Act of 1948, equivalent to an authorised improvement within the meaning of the Settled Land Act, in the sense that capital money may be expended in payment for such repairs without any necessity to replace any of the expense thereof out of income.

In *Re Duke of Northumberland, supra*, a settlement of land, which included agricultural land, was made in such a way as to bring it within the provisions of the Settled Land Act. The tenant for life had expended considerable sums of money out of her own pocket in repairs to and maintenance of the settled realty, and indeed, in recent years her expenditure on such repairs and maintenance had exceeded the net rents of the settled realty. The tenant for life's expenditure in this respect had included expenditure on repairs to land which was not comprised in any contract of tenancy, as well as expenditure on repairs to land which was comprised in such a contract, and the principal question was whether, by virtue of the provisions referred to above, the trustees of the settlement were entitled to apply capital money in payment of moneys expended by the tenant for life in repairs to both classes of land, or only in payment of moneys so expended in repairs to land comprised in a contract of tenancy.

The solution to this question lay in the meaning to be attached to the word "landlord" in s. 73 (1) (iv) of the Settled Land Act, 1925 ("money expended . . . by a landlord . . . in . . . the execution of any improvement comprised in," *inter alia*, Pt. II of Sched. III to the Act of 1948). Section 94 of the Act of 1948 defines "landlord" as "any person for the time being entitled to receive the rents and profits of any land," and Vaisey, J., held that where the word was used in close conjunction with a reference to the Act of 1948 (originally, when s. 73 (1) (iv) was first enacted, the Act of 1923), it must bear the meaning assigned to it by the later Acts. To bring s. 73 (1) (iv) into operation in any given case it was not, therefore, necessary that the land in respect of which the payment had been incurred should be land comprised in a tenancy of any kind. The result was a declaration that, under the enactments referred to above, the trustees of the settlement were entitled to apply capital moneys in payment, as for an improvement authorised by the Settled Land Act, 1925, of any money expended by the tenant for life in the execution of such repairs as were specified in para. 23 of Sched. III to the Agricultural Holdings Act, 1948, in relation to agricultural land, whether or not the same was comprised in a contract of tenancy.

This result is strange, and it may be doubted whether it was quite what the draftsmen of the various Acts, which in combination produced it, really intended; but that is what sometimes happens when referential legislation gets out of hand. On this type of legislation and its use in this particular case the learned judge had some apt words. "This is," he observed, "a very inappropriate and inconvenient use of what may be called 'referential legislation.' The Settled Land Act, 1925, deals with settled land and the mutual rights and obligations of persons possessing particular estates and interests in such land. The Agricultural Holdings Act, 1923, Pt. III of the Agriculture Act, 1947, and the Act of 1948, all relate to agricultural holdings . . . and particularly the mutual rights and obligations of landlords and tenants, and it would have been much easier to follow the meaning and purpose of the Legislature if these very different subject-matters had been kept separate and distinct." And, one may perhaps add, such separate provisions would have been more likely to accord with the Legislature's intentions, if those were ever clearly formulated.

* * * * *

One more word on the power of advancement. In the ordinary case, that is to say, in the case of the statutory power or any express power drawn in broadly similar terms, no advancement can be made to prejudice any person entitled to any prior life or other interest in the trust fund without the consent in writing of that person. If the interest of that person is a protected interest, the giving of such consent operates to forfeit his or her interest (see, e.g., *Re Stimpson's Trusts* [1931] 2 Ch. 77), and it is in order to avoid such a consequence that the provisions creating protected life interests, whether the statutory provisions contained in s. 34 of the Trustee Act, 1925, or expressly drawn provisions of a similar kind, exclude from the events which will cause a forfeiture the exercise of any power of advancement affecting the trust funds.

A reader has now pointed out that a person who is a member of the class of persons in whose favour a discretionary trust would arise, under the statutory provisions, on the forfeiture of the primary interest, is not a person who is entitled to any prior interest within the meaning of s. 32 of the Trustee Act, 1925, so that the consent of that person is not required to an exercise of the power of advancement, and if given does not affect his interest under the discretionary trust, if that should arise—so held by Farwell, J., in *Re Harris's Settlement* (1940), 84 SOL. J. 205; 56 T.L.R. 429. This decision is not, I think, widely known, and I am grateful to my correspondent for drawing attention to it.

"A B C"

Landlord and Tenant Notebook

WAIVER OF COVENANT RESTRICTING USER

SOME interesting points were raised in the recent case of *Downie* v. *Turner* [1951] 1 All E.R. 416; 95 SOL. J. 60 (C.A.), in which a covenant not to use premises—a dwelling-house—for any other purpose than as a private dwelling-house was held to have been waived by acceptance of rent after knowledge of the alleged breach.

I say "the alleged breach" because doubt was expressed by all three members of the court whether a sub-letting for residential purposes did constitute a breach in the particular case. It was not necessary for them to decide the point, but in view of what is or has commonly been considered to be the law thereon it is worth while examining the reasoned *dicta* of Somervell and Jenkins, L.JJ.; Birkett, L.J., did not go into reasons.

The premises had been let in 1940 under an agreement for one year and thereafter at a weekly rent determinable by notice. The tenant's covenants included (*a*) a covenant that he would not underlet the premises or any part thereof without the previous consent in writing of the landlord, which would not be unreasonably withheld to a good tenant, and (*b*) a covenant by which he agreed that he would not use the said premises for any other purpose than as [*sic*] a private dwelling-house or do anything therein that might be or become a nuisance to the landlord or adjoining tenants or neighbours.

The tenant sub-let part without consent in February, 1946, as living accommodation. In September the landlord knew about the sub-letting, but went on receiving rent. In October he served a notice to quit on the tenant, who in November served one on the sub-tenant. But till a date in February, 1950, the landlord went on accepting rent. In April, 1950, he served a forfeiture notice, which was ignored.

I have set out all the above facts because both the juxtaposition of the qualified covenant against sub-letting and the length of the term played a part in raising doubts whether the covenant restricting user had in fact been broken. The authority warranting the proposition that it had been broken is *Barton* v. *Keeble* [1928] Ch. 517, in which the lease was a ninety-nine-year one, ground rent £8 a year, of a dwelling-house on the Dulwich College Estate; the covenant held to be broken was a covenant not without previous licence to use the premises or any part thereof, or permit the same to be used, for any purpose whatsoever other than for the purpose of a private dwelling-house wherein no business of any kind was carried on; and this was followed by a covenant against annoyance (left to the judgment of the lessors). The house was one of some 3,500 on a large estate and the lessors were clearly actuated by a desire to preserve amenities. What was complained of was the sub-letting of a floor (as a residence), and Eve, J., held that both covenants had been broken thereby.

It was urged that the house was still a private dwelling-house wherein no business of any kind was carried on. The learned judge held that, on the authorities, but for the "wherein no business," etc., there could be no argument (*Kimber* v. *Admans* [1900] 1 Ch. 412 (C.A.), and *Berton* v. *Alliance Economic Investment Co.* [1922] 1 K.B. 742 (C.A.), showed that letting in tenements constituted a breach of such a covenant). In the former, it was held that a covenant binding a purchaser that no house should be erected on any part of purchased plots of less value than £500 would be broken by building blocks of flats, the individual flats being worth less than £500; in the latter, an unreported decision of the Court of Appeal, *Berton* v. *London & Counties Property Co.* (*The Times*, 19th May, 1920), was referred to as good authority for the proposition that letting in separate tenements was a breach of a covenant to use a house only as a private dwelling-house. That case, too, concerned a long lease of a property on an estate with amenities. And in *Barton* v. *Keeble* it was held that the "wherein no business," etc., addition was not qualification but emphasis.

What is important, however, is that Eve, J., mentioned, without actual disapproval, an argument to the effect that "a private dwelling-house" was capable of more meanings than one, according to context; and this opinion may be said to underlie the strictures of Somervell and Jenkins, L.JJ., in *Downie* v. *Turner*. Somervell, L.J., after referring to the length of the lease and the absence of a restriction on sub-letting in *Barton* v. *Keeble*, said of the agreement before him: "Of course, if a lessee sub-lets for some purpose other than use as a private dwelling-house, both covenants are broken, but where he sub-lets for the purpose of use as a private dwelling-house it seems to me difficult to say that that is a breach of the second covenant, which has no such provision for consent." And Jenkins, L.J., pointed to the curious results which would follow if it were: the tenant might apply for consent to the sub-letting to a "good" tenant, which the landlord was bound to grant; by proceeding to sub-let accordingly, would the tenant incur a forfeiture for breach of the other covenant?

I would suggest that, in a case like *Downie* v. *Turner*, support could be found for Jenkins, L.J.'s *dictum* by reference to repugnancy between the two provisions; but that the mere circumstance that the term is short ought not to distinguish a case from *Barton* v. *Keeble*. After all, grammar and arithmetic and the rule of construction by which a court must try to give effect to every word would still operate; the word in this case being the word "a."

Judgment was, however, actually given for the defendant on the ground that any breach that there had been had been waived. The plaintiff's contention was, of course, that a covenant not to use gave rise to a continuous obligation, so that, as in *Penton* v. *Barnett* [1898] 1 Q.B. 276—a case of a covenant to keep in repair—waiver was no answer. *Atkin* v. *Rose* [1923] 1 Ch. 522, in which a covenant not to use or exercise or permit or suffer any other person to use or exercise in or upon the premises any trade or business other than that of a bag manufacturer, was also relied upon. Somervell, L.J., distinguished these as dealing with quite different subject-matters, and proceeded to examine the effects of three further cases.

Walrond v. *Hawkins* (1875), L.R. 10 C.P. 342, had been considered by the county court judge to give the best definition available of "continuous"; something which it still remains in the tenant's power to discontinue. Somervell, L.J., demurred to this, but considered that the effect of *Griffin* v. *Tomkins* (1880), 42 L.T. 359, was that a power to discontinue was an element in considering whether a breach was continuous. And in *Lawrie* v. *Lees* (1880), 14 Ch. D. 249 (C.A.), Bramwell, L.J., explained *Walrond* v. *Hawkins* as having decided that unauthorised sub-letting was not a breach of a covenant not to permit any other person to occupy. This, according to Somervell, L.J., seemed to negative precisely what the landlord was seeking to do in the case before him.

In my respectful submission, Bramwell, L.J.'s observations point to the possibility of a shorter solution. All three cases

mentioned concerned leases in which there were covenants not to permit, or not to permit or suffer, something which the tenant had also covenanted not to do himself. This invites the suggestion that the defendant in *Downie* v. *Turner* might safely have pleaded, not that the breach had been waived, but that it had not happened; the badly drawn instrument under which he held said nothing about permitting, and he was not (himself) using the premises for any other purpose than "as" a private dwelling-house. It is true that in *Doe d. Ambler* v. *Woodbridge* (1829), 9 B.C. 376, a court held that a covenant "not to use" rooms in a house was a continuous one, but the covenant restricted user to user as bedrooms and sitting-rooms *for the occupation* of the tenant and his family, and this would explain the paraphrase "the covenant is that the rooms shall not be used," etc.

R. B.

HERE AND THERE

SPARE THAT MURAL

ONE of my little jokes has just been spoilt. You know the enormous mural that fills the whole north end of the New Hall in Lincoln's Inn. G. F. Watts did it in those dear dead mid-Victorian days of boundless personal energy. He felt that here, on a surface bigger than the side of most houses, was scope for his masterpiece and he offered to fill it, free of charge, with the lawgivers of all times, if the Inn would just provide the scaffolding. He was in poor health and it took him a long time, but he got his wall filled with the more than life-size figures of his lawgivers—actually more or less eminent Victorians in fancy dress—Zoroaster, Charlemagne, Solon, Edward I, a couple of Magna Carta barons, Attilla (rather unexpectedly) and beside him Alfred the Great, curiously impersonated by a lady of title. Finally the Inn presented him with the compliment of a silver cup brimming (in those undevalued days) with 500 golden sovereigns. Now here was the little joke. Five or six years ago one of the benchers happened to be reading the Inn's insurance policies (whether for pleasure or for duty does not appear) and discovered that for over half a century it has been insuring this monumental mural against burglary. I don't vouch for the full and complete accuracy of the tale but that, at any rate, is what is passing into the folklore of the Society. Well, now a letter in the *Sunday Times* has rather taken the edge off the joke. It tells of how a 13th century fresco, 40 feet by 20, was moved from a Buddhist temple in China to the Royal Ontario Museum. The purchasers cut from the wall sixty-two separate slabs of clay about a yard square and 2 inches thick. These were transported by ox-cart to Tientsin, 500 miles away, and so on to Ontario, where the clay backing was removed and the paint surface transferred to canvas and board. So, theoretically, at least, a burglar could strip the Inn of its walls and the laugh on the benchers is not quite so loud, though, at this time of day, I can't see anyone taking all that trouble over Watts. I offer this unusual crime to any professional writer of "Who-dun-its," on the look-out for something out of the ordinary.

GUNPOWDER PLOT

"So they all fell to playing catch-as-catch-can till the gunpowder ran out of the heels of their boots." You remember the conclusion of Samuel Foote's "Great Panjandrum" piece of nonsense. Well, an indictment in a criminal case in Rome seems likely to provide an enterprising thriller writer with a brand new plot of which that might be the text, unless, indeed, it was a case of nature imitating art and the idea originally came out of a thriller. According to the story of the prosecution, an officer in the cavalry received an anonymous gift of a smart pair of riding boots shortly before he was transferred from Rome to Brescia. He kept them to make a good impression when he reported to his new commanding officer. Indeed he made an unforgettable impression. He saluted, clicked his heels smartly and exploded—fatally. The subtle donor having concealed a suitable explosive in the heels, the click detonated it with scientific infallibility according to plan. That was thirteen years ago. Throughout a world war the bloodhounds of the law have kept their noses faithfully to the trail and now claim that the author of this one-man gunpowder plot was a baffled rival in a love affair. All baffled rivals of heel-clicking cavalry officers will await the result of the trial with profound interest. I suppose, after the wonderful Victorian novel to which we have been treated in the *Fitzwilliam* case, it is a shade ungrateful to say so, but the law abroad does seem oftener to provide plots ready-made for the author or scripts for the scenario writer. Only the other day, in Paris, there was a real life sequence which I confidently expect to see incorporated in a French film one of these days. Police inspector is chasing a suspect who finds a tandem bicycle and hops on. The athletic inspector puts on an extra sprint and takes a flying leap onto the rear saddle. So there they go pedalling through Paris at full speed with the suspect in charge, and at every crossing the point-duty man, seeing the inspector's uniform, steps aside and salutes smartly. Three miles on the inspector manages to slip a handcuff on one of his companion's wrists; they both fall off and the suspect melts into the crowd.

HAIR RAISING

ANOTHER little glance abroad, if you please—this time to Egypt. We were lately meditating, you may remember, on the advantages of the French Conseil d'Etat, the species of Judicial Committee of the Privy Council which judicially controls the actions and orders of the Executive in France. Well, it seems they have a corresponding institution by the Nile, and it lately gave a ruling in a field of jurisprudence little explored by our own courts. Police constable Mohammed Ibrahim Sayed Ahmed was the privileged possessor of a moustache of remarkable quality, a splendid example of the Kaiser Wilhelm variety familiar to all students of the cartoons of the first world war. It was longer than his name and just as beautiful. But his superiors cast jealous and hostile eyes on it. They said that it caused traffic blocks when he was on point duty because drivers stopped to look at it. Under orders he was forced to clip it down to the absurd dimensions of that ridiculous little devalued moustache with which cartoonists had to be content in handling Nuisance No. 1 of world war No. 2. Shorn and humiliated (as Samson before Hedy Lamarr) he was moved first from the centre of the city and then to a suburb. But the Council of State remained as a refuge and he moved before it for what someone, in another context, once called *habeas fungus. De minimis non curat lex?* By no means. What is not too small for the state to envy is large enough for the law to defend. He was awarded only one-halfpenny as "moral damages," but won the strategic victory of a declaration that the order to shave was *ultra vires. Fiat justitia! Florcant grani!*

RICHARD ROE.

Mr. William Dawson, solicitor, of Gainsborough, left £19,947 (£17,260 net).

Mr. W. A. Ensor, solicitor, of Birmingham, left £13,849 (£12,220 net).

Mr. O. J. Taylor, solicitor, of Loughborough, left £40,528.

Mr. H. V. Wells, solicitor, of Finchley, left £21,853 (£19,535 net).

Mr. A. F. B. Welch, solicitor, of Paignton, left £25,778.

NOTES OF CASES

HOUSE OF LORDS

REQUISITIONING: FELLING OF TREES

Demetriades *v.* Glasgow Corporation

Lord Normand, Lord Morton of Henryton, Lord MacDermott and Lord Reid. 7th February, 1951

Appeal from the Court of Session (First Division).

The plaintiff claimed against Glasgow Corporation damages for the cutting down by them of trees on property of his which they had requisitioned, and also a declaration that they were not entitled to cut down trees. The corporation pleaded that they had felled the trees in a workmanlike manner and because of complaints of their overhanging by a neighbouring occupier. The Court of Session, reversing the sheriff-substitute, dismissed the action. The plaintiff appealed. The House took time for consideration. By reg. 51 (*2*) of the Defence (General) Regulations, 1939: "While any land is in the possession of a competent authority by virtue of this regulation, the land may . . . be used by . . . the competent authority for such purpose, and in such manner, as that authority thinks expedient in the interests of public safety . . . or for maintaining supplies and services essential to the life of the community . . . and the competent authority, so far as it appears to it to be necessary or expedient . . . may do . . . in relation to the land, anything which any person having an interest in the land would be entitled to do in virtue of that interest . . . "

LORD NORMAND said that the question was whether the cutting down and mutilation of the trees was an improper exercise of the corporation's powers under a valid requisition for the purpose of accommodating persons inadequately housed. The regulation did not confer on the competent authority unlimited powers in dealing with the property requisitioned; but it was hard to find in it any limit to the powers of use or action in connection with the use of the property, provided that the competent authority, having applied their minds to the question, in good faith, thought the use expedient for the purpose of the requisitioning or the action necessary or expedient in connection with the use. It was submitted that, though the competent authority were empowered to do anything ancillary to the purpose of the requisition, there was reserved for the courts the decision whether a particular act was ancillary or not. The words of the regulation excluded such a reservation. Nor did they leave the courts' jurisdiction to entertain the question whether the competent authority had acted with reasonable care and skill. In the absence of averments of bad faith or ulterior motive the jurisdiction of the courts was excluded, and the competent authority were the judges of the use which should be made of the land and of what they should do in connection with that use for the purposes of the requisition. The appeal failed.

The other noble and learned lords agreed that the appeal failed.

Appeal dismissed.

APPEARANCES: *Sir David Maxwell Fyfe*, K.C. (of the English Bar), *G. G. Stott*, K.C., and *Forsyth*, K.C. (both of the Scottish Bar) (*Stephenson, Harwood & Tatham*, for *A. Watson*, Edinburgh, and *Symington & Blair*, Glasgow); *M'Donald*, K.C., and *Macvicar* (both of the Scottish Bar) (*Martin & Co.*, for *Simpson & Marwick*, W.S., Edinburgh).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

MEASURE OF DAMAGES: DEATH OF MOTHER IN ACCIDENT

Glasgow Corporation *v.* Kelly

Lord Simonds, Lord Normand, Lord Morton of Henryton, Lord MacDermott and Lord Reid. 7th February, 1951

Appeal from the Court of Session (First Division).

A married woman received fatal injuries on being knocked down by an omnibus belonging to the defendant corporation. Her husband, and five children aged respectively thirteen, nine, eight, seven and five years, survived her. Her husband brought an action against the corporation, but died within a year of his wife. The action was continued by his executor. At the trial the Lord Ordinary (Lord Birnam) held that the deceased woman and the corporation's driver were equally to blame for the accident. He assessed the damages at £150 for the husband and £100 for each of the children, and granted decrees for half those amounts. The First Division of the Court of Session increased the assessment of the damages to £250 in the case of the husband, £150 for the child of thirteen, £200 for the child of nine, £250 for the child of eight, £300 for the child of seven and £350 for the child of five. Each of those sums was halved owing to the mother's contributory negligence. The court held that the Lord Ordinary had not on the one hand taken sufficiently into account the fall in the value of money and on the other the expansion of the social services; that the husband's early death was a factor which diminished his claim based on grief and suffering; but that the father's death increased the children's claim based on loss of their mother's support, and that a distinction should be made among them in view of their ages. The corporation appealed. The House took time for consideration.

LORD SIMONDS said that there was no justification for disturbing the decision of the First Division. All material factors had been taken into account and, properly applying the broad principles applicable to such a case, the court had arrived at a figure which was not excessive or extravagant. In doing so they had not infringed any principle or rule of practice with regard to the interference by an appellate court with the assessment of damage by the trial judge. The other noble and learned lords agreed.

APPEARANCES: *J. L. Clyde*, K.C., and *H. R. Leslie*, K.C. (both of the Scottish Bar), and *A. M. Wallace* (*Martin & Co.*, for *Simpson & Marwick*, W.S., Edinburgh); *H. McKechnie*, K.C., and *F. Duffy* (both of the Scottish Bar) (*O. H. Parsons*, for *Herbert Macpherson*, S.S.C., Edinburgh, and *L. & L. Lawrence*, Glasgow).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TRAMCAR: SUDDEN BRAKING OWING TO DOG

Glasgow Corporation *v.* Sutherland

Lord Simonds, Lord Normand, Lord Morton of Henryton, Lord MacDermott and Lord Reid. 7th February, 1951

Appeal from the Court of Session (Second Division).

The driver of a tramcar brought it to a sudden halt in order to avoid running over a dog. The plaintiff, who had just boarded the tram, and not yet had time to seat herself, was thrown to the ground and injured. She sued the corporation for damages. The Court of Session, reversing the sheriff-substitute, held them liable. The court found as facts that the driver knew that the plaintiff had just boarded the tramcar and knew or ought to have known (*a*) that she had not had time to take her seat, and also (*b*) that the application of the magnetic brake might cause such a passenger to fall. The court's findings in law were as follows: (1) That the onus was on the defendants to prove that the driver acted reasonably in dealing with the emergency caused by the dog, having in view the probable effect of an application of the magnetic brake on the plaintiff; (2) that the defendants had failed to discharge the onus; (3) that the defendants were liable to the plaintiff in damages. The corporation appealed. The House took time for consideration.

LORD SIMONDS said that what was called a finding in law might in truth be a finding in fact and vice versa. The difficulty in the present case arose from failure to observe the proper boundaries of fact and law. This was a question of negligence, and negligence was established if it were proved as a fact that the driver had in relation to the plaintiff not acted with the skill and care with which a reasonable and prudent tramcar driver should have acted. That was a question of fact, but there was no finding of fact that the driver had or had not exhibited that degree of skill and care. It was, however, wrapped up in the first and second so-called findings in law, for they could mean nothing else than that the driver whose action had caused the injury, and who had therefore to explain and justify his action, had not shown that he had acted reasonably, i.e., as a reasonable and prudent driver should have acted in the circumstances. From that finding the consequence in law followed that he had been negligent. He (his lordship) did not intend either to cast any doubt on or to affirm *Parkinson* v. *Liverpool Corporation* (1950), 94 SOL. J. 161; 66 T.L.R. (Pt. 1) 262. The other noble lords concurred in dismissal of the appeal.

APPEARANCES: *J. L. Clyde*, K.C., and *H. R. Leslie*, K.C. (both of the Scottish Bar) (*Martin & Co.*, for *Simpson, Marwick and Co.*, W.S., Edinburgh); *G. G. Stott*, K.C., and *F. W. F. O'Brien* (both of the Scottish Bar) (*Beveridge & Co.*, for *A. Watson*, Edinburgh, and *Thomas Donnelly & Co.*, Glasgow).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

MONEYLENDER: SECOND MORTGAGE: LIMITATION OF ACTION

C. & M. Matthews, Ltd. *v.* Marsden Building Society

Harman, J. 2nd February, 1951

Adjourned summons.

X, the owner of a house, mortgaged it to the defendants to secure £725, repayable in monthly instalments. X then borrowed from the plaintiffs, registered moneylenders, £40, giving a promissory note whereby he undertook to repay the principal and interest at 82½ per cent. a year by monthly instalments of £5, and further giving the plaintiffs a legal charge on the property. X died in 1940, and on the date of his death he owed the defendants approximately £605 and the plaintiffs some £32. At the end of 1949 the defendants sold the property for £1,000 and, after deduction of their claim and the costs, retained £412. The plaintiffs, who, from the date of X's death, reduced the rate of interest to 48 per cent., claimed to be entitled as second mortgagees to £182 or alternatively the whole £412. The defendants resisted the claim as they considered that the transaction might be held to be harsh and unconscionable and that the plaintiffs might be barred by the Moneylenders Act, 1927, s. 13, which provides that no proceedings can be taken by a moneylender for the recovery of money lent or for the enforcement of any security unless the proceedings are commenced before the expiration of twelve months from the date when the cause of action accrued.

HARMAN, J., said that the plaintiffs were barred by s. 13. They could not rely on s. 105 of the Law of Property Act, 1925, because in spite of the title of the summons, this was, in effect, a proceeding to enforce the security. In these circumstances the proper order was that the defendants, after defrayment of their proper costs, charges and expenses, including their costs of the present summons as between solicitor and client, should lodge the balance of the money in court.

APPEARANCES: *A. L. Figgis* (*M. A. Jacobs & Sons*); *E. G. Wright* (*Bentleys, Stokes & Lowless*, for *Jobling & Knape*, Morecambe and Heysham).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHARITABLE PURPOSES: "HOME OF REST" FOR HOSPITAL NURSES: NATIONALISATION OF HOSPITAL

***In re* White; Tindall *v.* United Sheffield Hospital Governors**

Harman, J. 6th February, 1951

By his will dated 25th June, 1919, the testator left his personal and real estate after the death of the tenant for life (his wife) on trust for "The Royal Infirmary, Sheffield, to be applied by them for the purposes of a home of rest for the nurses of that institution." The testator died in 1920; at that time there was in existence in Sheffield the Royal Infirmary, an unincorporated voluntary hospital. By an Act of 1938, the Royal Infirmary and another hospital in Sheffield were amalgamated and incorporated, and it was provided that gifts to either of the hospitals should take effect as gifts to the new corporation. Under the National Health Service Act, 1946, the amalgamated institution was constituted a member of a group of teaching hospitals.

HARMAN, J., said that he did not dissent from the view expressed by Farwell, J., in *In re James* [1932] 2 Ch. 25, that the words "home of rest" *prima facie* suggested a charitable object. In his (the learned judge's) opinion a home of rest was not a place for persons who were old or worn out or permanently in need of rest, but, rather, a convalescent home where persons actively engaged in whatever pursuit they might follow retired temporarily in order to recuperate. It could not be said that the gift lacked the element of public benefit which was essential to validate a charitable gift—an element which was lacking where the gift was to the employees of a company (*In re Drummond* [1914] 2 Ch. 90) or the relations of the testatrix (*In re Compton* [1945] Ch. 123). The purpose of the gift was to increase the efficiency of the Royal Infirmary in Sheffield. Nobody doubted that that institution was a charity carrying on the charitable work of healing the sick; and it would be difficult to contend that a gift which would increase the efficiency of the hospital, such as the provision of an X-ray machine or of a home of rest for the nurses, was not conducive to the work of the hospital. The fact that the efficiency of the hospital would be enhanced by the gift made it a valid charitable gift. The gift came within s. 60 of the National Health Service Act, 1946, as interpreted by s. 79 (2) of that Act, and it was, therefore, right, since this was a group of hospitals designated as a teaching hospital under the Act of 1946, to transfer the fund to the board of governors of that group to hold the fund so far as practicable upon the trusts declared by the will.

APPEARANCES: *E. M. Winterbotham, T. D. D. Divine* (*Sharpe, Pritchard & Co.*, for *Shelley, Barker & Son*, Sheffield); *D. S. Chetwood* (*Vizard, Oldham & Co.*, for *Edward W. Pye-Smith and Son*, Sheffield); *Nigel Warren* and *D. B. Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

SOLICITOR: COSTS: TAXATION: COUNSEL'S FEES AS "DISBURSEMENTS": SEPARATE SCHEDULE

***In re* A Solicitor; Levy *v.* Tiger**

Harman, J. 7th February, 1951

Adjourned summons.

The plaintiff, a solicitor, was instructed by the defendants in a probate action. In December, 1949, he delivered his bill of costs, which included an item of counsel's fees stated as not having been paid yet. On 22nd February, 1950, an order for taxation was made. On 17th March the plaintiff paid the outstanding fees to counsel's clerk. When the matter came before the master on 27th March, 1950, he disallowed the fees which were not paid on delivery of the bill because they were not shown in a separate schedule as required by Ord. 65, r. 27, reg. 29A. The plaintiff applied to amend his bill or alternatively to withdraw the bill and deliver a new one in accordance with the rule.

HARMAN, J., said that reg. 29A was introduced in 1909 to meet the decision of the Court of Appeal in *Holmes* v. *Penney* (1854), 9 Ex. 584, 588, that, on taxation of costs, fees of counsel which had not been paid when the bill was delivered should be disallowed. The rule empowered the master to allow disbursements made before taxation began but after the delivery of the bill, if, when the bill was delivered, it was expressly stated in it that the items had not been paid yet, and if the items were set out under a separate heading. In *In re Hildesheim* [1914] 3 K.B. 841, counsel's fees, paid after delivery of the bill but before taxation began, were disallowed because—as in this case—they were not shown in a separate heading. Although the court had jurisdiction to allow the amendment of the bill, it was doubtful whether *unpaid* counsel's fees were "disbursements," in view of the observations of Scott, L.J., in *In re A Solicitor* [1936] 1 K.B. 523, 530; if they were not "disbursements," an amendment would be ineffective, since there was no power to allow them under the rule, even if they were put into a separate schedule. As regards the plaintiff's alternative application, the fees *which now had been paid* were clearly "disbursements." The court had jurisdiction to allow such application in suitable circumstances, and the circumstances were suitable in this case. A solicitor must show a strong case to justify amendment or withdrawal of a bill—a very strong case if he desired to alter the bill so as to increase his charges. In this case, however, the mistake was merely one of form, no attempt had been made to deceive the clients and it was not thought to increase the original charge.

APPEARANCES: *J. A. Brightman* (*F. Shirley Turner and Harrison*); *R. Millner* (*Preston, Lane-Claypon & O'Kelly*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.

DIVISIONAL COURT

BANKRUPTCY: RECEIVING ORDER SET ASIDE: COSTS RECOVERABLE BY DEBTOR: SET-OFF

***In re* A Debtor (No. 21 of 1950); *ex parte* The Petitioning Creditor *v.* The Debtor**

Harman and Danckwerts, JJ. 12th February, 1951

Application by petitioning creditors.

A company, which had obtained judgment for £409 1s. 4d. against the debtor, petitioned in bankruptcy but, on application by the debtor, the receiving order was set aside and the petitioning creditors were ordered to pay the debtor the costs of the proceedings in the county court and of the appeal, amounting to approximately £72. The debtor intended to issue execution

against the petitioning creditors, who claimed to be entitled to a set-off and applied for a stay of execution in respect of the order for payment of costs.

DANCKWERTS, J., said there appeared to have been a disposition at one time to treat the lien of the debtor's solicitor on costs recovered as so strong a right that no set-off could be allowed to a creditor of the client. Later, however, the tide seemed to have turned against the debtor, and the consideration rendered to the solicitor's lien seemed to have been reduced. He (the learned judge) concluded that the court had a discretion to allow a set-off and, therefore, clearly power, if it thought fit, to order a stay of execution of the order for costs. *Prima facie*, it seemed most unfair that the creditor should have to pay his debtor, and it was difficult to see why an unpaid creditor should be required to provide for the costs of his debtor's solicitor and be subject to the risk of an execution to recover the amount of those costs. Accordingly, a stay of execution should be granted in the present case.

HARMAN, J., agreed. Stay of execution ordered.

APPEARANCES: *K. G. Jupp* (*Peacock & Goddard*, for *W. Parkinson Curtis*, Bournemouth); *C. H. Duveen* (*Isadore Goldman & Son*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: CONSTRUCTION: "ALL OR ANY THE CHILDREN OR CHILD OF MY SON [X] WHO SHALL ATTAIN THE AGE OF TWENTY-ONE YEARS"

***In re* Bleckly; Bleckly *v.* Bleckly**

Harman, J. 15th February, 1951

Adjourned summons.

By his will, the testator gave his estate to his son X absolutely. He provided in a codicil that his executors should invest £10,000 and pay the income thereof to X's wife during so much of her life as she should remain the wife or widow of his son, and subject to that interest the executors were directed to hold the £10,000 "upon trust for all or any the children or child of my son [X] who shall attain the age of twenty-one years if more than one in equal shares." After the death of the testator the marriage of the son with the wife mentioned in the codicil was dissolved, and the son married again. There were no children of the former marriage but there was one surviving daughter of X of the latter marriage who attained the age of twenty-one years. X and his wife were still alive. The court was asked to determine whether X's daughter, on attaining the age of twenty-one years, was entitled to the whole of the £10,000.

HARMAN, J., said that it had been submitted on behalf of X's daughter that she was entitled to the whole of the fund, according to the rule in *Andrews* v. *Partington* (1791), 3 Bro. C.C. 401. That rule was stated in Hawkins on Wills (1st ed.), at p. 75, as follows: "Where there is a bequest of an aggregate fund to children as a class and the share of each child is made payable on attaining a given age, or marriage, the period of distribution is the time when the first child becomes entitled to receive his share, and the children coming into existence after that period are excluded"; the rule was subject to certain exceptions and was defined in *In re Chartres* [1927] 1 Ch. 466, 471, but Astbury, J., left out the present case, that was, where there was no taker at all when the prior interest ceased. In his (the learned judge's) opinion, though the rule was well established and he would follow it in certain circumstances, it had frequently been applied with distaste and he would not extend its application, particularly as it would defeat the obvious intention of the testator, who plainly intended that any child which his son might have should share in the fund if he or she attained twenty-one. Consequently, the class was not closed and the fund was not yet distributable.

APPEARANCES: *C. E. Shebbeare*; *T. K. Wigan* (*Bower, Cotton & Bower*, for *Slater, Heelis & Co.*, Manchester).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

GOODS VEHICLE: BREACH OF CONDITION OF LICENCE

Lloyd *v.* E. Lee, Ltd.

Lord Goddard, C.J., Humphreys and Devlin, JJ.
24th January, 1951

Case stated by Southport justices.

The defendant company allowed their motor lorry, in respect of which they held a "C" licence, to be used by an associated company for the carriage of goods for hire or reward, no part of which was received by the defendant company. The appropriate identity certificate was not, on the occasion of that use by the associated company, affixed to the vehicle. The justices dismissed informations charging the defendants with contravention, respectively, of s. 2 (4) of the Road and Rail Traffic Act, 1933, and reg. 12 (2) of the Goods Vehicles (Licences and Prohibitions) Regulations, 1936. The prosecutor appealed. By s. 2 (4) of the Act of 1933: "A private carrier's licence (. . . a 'C' licence) shall entitle the holder thereof to use the authorised vehicle for the carriage of goods . . . subject to the condition that no . . . authorised vehicle shall be used for the carriage of goods for hire or reward." By s. 9: ". . . any person who fails to comply with any condition of a licence held by him shall be guilty of an offence . . ." By reg. 12 (2) of the Regulations of 1936: "the holder of a licence shall during such time as any vehicle is used under the licence cause the appropriate identity certificate to be affixed to that vehicle . . ."

DEVLIN, J., said that the true construction of s. 2 (4) of the Act of 1933 was that a vehicle should not be used by anybody in breach of a condition of its licence. There was no implied limitation in the subsection that the prohibition was applicable only to use of the vehicle by the licence-holder himself. Accordingly the offence created by s. 9 was not confined to the specified failure by the licence-holder himself. The conditions subject to which a licence was issued were in the licence itself, and if a condition were not complied with by anybody it was the licence-holder who was responsible for that fact, and who would, through his contravention of s. 2 (4), be guilty of the offence created by s. 9. As for the second information, if the appropriate identity certificate referred to in reg. 12 (2) of the Regulations of 1936 were not affixed to a vehicle, an offence was committed by the licence-holder even though the vehicle was not at the time being used by him. Moreover, on the true construction of reg. 12 (2), it was required not merely that the certificate should be affixed to the vehicle at some time during the licensing period, but that it should be kept affixed to it throughout that period. Accordingly the defendant company, although not themselves using the vehicle at the time, and although they received no reward for its use, were nevertheless guilty of contravening s. 2 (4) of the Act of 1933 and, in addition, reg. 12 (2) of the Regulations of 1936, and the appeal should be allowed.

LORD GODDARD, C.J., and HUMPHREYS, J., agreed. Appeal allowed.

APPEARANCES: *A. E. Baucher* (*Sharpe, Pritchard & Co.*, for *The Town Clerk*, Southport); *J. R. C. Samuel-Gibbon* (*Vizard, Oldham & Co.*, for *Henry Backhouse & Son*, Blackburn).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

The Art of Drafting

Sir,—I believe I am identical with the contributor of the article mentioned in the last paragraph of Mr. H. F. Cain's letter in your issue of 10th March.

It is true that in that article [90 SOL. J. 438] I advocated the replacement of "covenant" by "agree," etc., *in certain cases*. But I was not contemplating conveyances of the kind dealt with in "The Elements of Drafting" and "A B C's" article. I had in mind, rather, such documents as tenancy agreements and short leases, the counterparts whereof are all too readily executed by grantees who (*a*) being faced with moving expenses and an impending bill for dilapidations, etc., neglect to seek professional advice, and (*b*) read no further than the first word or phrase which strikes them as "barbarous," as difficult, or inappropriate to express, in a manner intelligible to themselves, the terms of a bargain which they believe they understand already and are not in a position to haggle about in any event. Like Mr. Cain, I revere and value the word "covenant"; but its use has, to my knowledge, had the unfortunate effect of deterring people from reading what are, essentially, conveyances binding upon them.

London, E.C.4. R. B.

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 21st March :—

Alkali, &c., Works Regulation (Scotland)
Consolidated Fund (No. 2)
Export Guarantees
Livestock Rearing
Overseas Resources Development
Reserve and Auxiliary Forces (Training)
Town and Country Planning (Amendment)
Workmen's Compensation (Supplementation)

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—
Royal Albert Hall Bill [H.L.] [20th March.

Read Second Time :—
Humber Conservancy Bill [H.C.] [21st March.

Read Third Time :—
Canterbury Extension Bill [H.L.] [20th March.
Dartmouth Harbour Bill [H.L.] [20th March.

In Committee :—
Forestry Bill [H.L.] [20th March.

B. Questions

Duty on Service Men's Estates

The Minister of Civil Aviation (Lord Pakenham) said that the estates of soldiers below the rank of sergeant (and of members of the other services of equal rank) who were killed or died in the service of the Crown were wholly exempt from estate duty. This exemption derived from a provision of the Stamp Act, 1815 (which was incorporated in the estate duty by s. 8 (1) of the Finance Act, 1894), exempting from all stamp duties the property of " any common seaman, marine or soldier who shall die or be slain in the service of His Majesty." The estates of those of higher rank were granted a relief from estate duty which might not in all cases amount to complete exemption by s. 38 of the Finance Act, 1924. That section provided that where members of the Forces were killed in action and their estates passed to their widows or to certain near relations the first £5,000 of the estate was exempt, and there was a substantial relief on the remainder, the amount of which depended on the age of the deceased. The Chancellor of the Exchequer considered that this latter provision did full justice to the claims of those members of the Forces who lost their lives in action. He would bear in mind suggestions that those not killed outright should have a similar relief, but he could not agree that complete exemption should be afforded to all ranks. The line had to be drawn somewhere. It was true, however, that if a millionaire happened to be serving in the ranks when he was killed on active service his estate would not have to pay duty. [20th March.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—
Easter Act (Amendment) Bill [H.C.] [20th March.
To amend the Easter Act, 1928.
Rivers (Prevention of Pollution) (Scotland) (No. 2) Bill [H.C.] [21st March.

To provide for establishing river purification boards in Scotland and for conferring on or transferring to such boards functions relating to the prevention of river pollution ; to make new provision for maintaining or restoring the cleanliness of the rivers and other inland waters and the tidal waters of Scotland in place of the Rivers Pollution Prevention Act, 1876, and certain other enactments ; and for purposes connected with the matters aforesaid.

Read Second Time :—
Army and Air Force (Annual) Bill [H.C.] [19th March.
Falkirk Burgh Extension, &c., Order Confirmation Bill [H.C.] [22nd March.

B. Questions

Motor Vehicles (Driving Offences)

Mr. Chuter Ede stated that in 1949 the number of convictions for driving under the influence of drink or drugs was 1,662. In 1,566 of these cases the offender's driving licence was suspended. Comparable figures for 1950 were not yet available, nor were any figures available as to the number of licences restored before the full period of suspension had expired. [15th March.

Naturalisation Certificates (Fees)

Mr. Chuter Ede said it had been decided that for a certificate of naturalisation granted on an application by an alien after 1st April the fee charged should be £15 instead of £10, and that £2 instead of £1 should be payable on submission of the application. Corresponding changes would be made in the fees chargeable for the naturalisation of British protected persons. [15th March.

Legal Aid and Advice

The Attorney-General stated that it was not yet possible to forecast the date upon which any further part of the Legal Aid and Advice Act could be brought into force, and he was not yet able to forecast what would be the cost of any future extension of its provisions. [19th March.

Model Bylaws (Committee)

Mr. Hugh Dalton said that he was setting up a committee to advise him on the question of a revised code of building bylaws. He had invited local authority associations and professional bodies to submit names. [20th March.

Sub-letting (Rents)

Mr. Alport asked whether, in view of the decision of local authorities to charge additional rents for council houses in which more than one family were accommodated or in which the tenant took lodgers, he would consider taking the necessary steps to extend this principle to rent-restricted properties, provided that adequate safeguards existed against overcrowding and against exploitation of the tenant by the landlord. In reply, Mr. Dalton said that this would require legislation for which time was not available. [20th March.

Rooms, London (Rents)

Mr. Dalton said he could hold out no hope of legislation to protect tenants of long-standing in hotels, boarding-houses and apartment houses who were being given notice to vacate their rooms so that they could be let at inflated prices to visitors to the Festival of Britain. He had looked into the question of making use of the rent tribunals in this matter, but he was afraid that under the present circumstances that was not possible. [20th March.

Local Authority, Development Plans

Mr. Dalton stated that five applications had been received from local authorities for an extension of time in which to submit their development plan under s. 5 of the Town and Country Planning Act, 1947. Some of these applications had been granted. [20th March.

Gipsies (Caravan Site)

Mr. Dalton said the Home Secretary had informed him that in most counties gipsies had no difficulty in finding places where their caravans could be accommodated without breaking the law. In a few places land occupied by gipsies was required for other purposes, but the gipsies should generally be able to find alternative sites. Mr. Dodds said the bylaw which permitted gipsies to be driven from a district, even when they had lived there for twenty years or more, took no thought of whether they could find another resting place. The position got worse week by week and he gave notice that he would raise the matter again on the adjournment. [20th March.

Building Regulations (Contraventions)

Mr. R. R. Stokes stated that in the four years 1947–50 his Department and the local authorities had investigated 19,489 cases of alleged contravention of Defence Regulation 56A. Records did not show the type of body or person concerned where no prosecution was instituted. Proceedings were instituted in 1,189 cases involving 1,523 private individuals, 507 private companies and two boards of nationalised industries. [20th March.

Stamp Duty (Evasion)

Mr. Gaitskell said that cases of failure to stamp receipts properly were brought from time to time to the notice of the

Commissioners of Inland Revenue and suitable action was taken by way of warning, pecuniary penalty or legal proceedings in each case. He had no reason to suppose that evasion of legal obligations in relation to receipt duty was widespread. It was not true to say that cash transactions did not require a stamped receipt if over £2. [20th March.

COPYRIGHT LAW

Mr. BOTTOMLEY said that in the general review of copyright law which was to be undertaken at an early date special attention would be paid to the desirability of legislation to prevent or deal with any abuse of the monopoly rights conferred on owners of copyright by the law of the United Kingdom in accordance with the reservation of His Majesty's Government made in connection with the signature of the Brussels Copyright Convention in 1948. [20th March.

STATUTORY INSTRUMENTS

Bolts, Nuts, etc., Prices Order, 1951. (S.I. 1951 No. 404.)
British Nationality Regulations, 1951. (S.I. 1951 No. 423.)
Chocolate, Sugar Confectionery and Cocoa Products Order, 1951. (S.I. 1951 No. 417.)
County of Surrey (Electoral Divisions) Order, 1951. (S.I. 1951 No. 419.)
Defence Regulations (No. 2) Order, 1951. (S.I. 1951 No. 427.)
Eggs (Great Britain and Northern Ireland) (Amendment) Order, 1951. (S.I. 1951 No. 426.)
Gas (Conversion Date) (No. 26) Order, 1951. (S.I. 1951 No. 442.)
General Hollow-ware (Maximum Prices) (Amendment No. 3) Order, 1951. (S.I. 1951 No. 421.)
Hill Sheep Subsidy Payment (England and Wales) Order, 1951. (S.I. 1951 No. 451.)
House of Commons (Redistribution of Seats) (No. 9) Order, 1951. (S.I. 1951 No. 431.)
House of Commons (Redistribution of Seats) (No. 10) Order, 1951. (S.I. 1951 No. 432.)
Import Duties (Drawback) (No. 8) Order, 1951. (S.I. 1951 No. 408.)
Knitted Goods (Manufacture and Supply) (Amendment No. 4) Order, 1951. (S.I. 1951 No. 395.)
Lancashire Rivers Board Dissolution Order, 1951. (S.I. 1951 No. 396.)
Leicestershire and Rutland Police (Amalgamation) Order, 1951. (S.I. 1951 No. 420.)
Live Poultry (Restrictions) Order, 1951. (S.I. 1951 No. 443.)
Maintenance Orders (Facilities for Enforcement) (Nova Scotia) Order, 1951. (S.I. 1951 No. 429.)
Meat (Prices) Order, 1951. (S.I. 1951 No. 415.)
Meat (Prices) (Northern Ireland) Order, 1951. (S.I. 1951 No. 416.)
Mid-Wessex Water Order, 1951. (S.I. 1951 No. 412.)
Non-Ferrous Metals Prices (No. 2) Order, 1951. (S.I. 1951 No. 425.)
North West Wales River Board (Transfer of Powers of the Mawddach and Union Internal Drainage Board) Order, 1950. (S.I. 1951 No. 446.)
North West Wales River Board (Transfer of Powers of the Mawddach and Union Internal Drainage Board) (Appointed Day) Order, 1951. (S.I. 1951 No. 447.)
Purchase Tax (No. 3) Order, 1951. (S.I. 1951 No. 397.)
Rationing (Personal Points) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 418.)
Reinstatement in Civil Employment (Isle of Man) Order, 1951. (S.I. 1951 No. 433.)
Retention of Cables, Mains and Pipe under Highways (Lanarkshire) (No. 1) Order, 1951. (S.I. 1951 No. 439.)
Retention of Cables under Highway (Kent) (No. 1) Order, 1951. (S.I. 1951 No. 434.)
Safeguarding of Industries (Exemption) (No. 2) Order, 1951. (S.I. 1951 No. 445.)
Stopping up of Highways (London) (No. 6) Order, 1951. (S.I. 1951 No. 436.)
Summer Time Order, 1951. (S.I. 1951 No. 430.)
Superannuation (Public Offices outside the United Kingdom) Rules, 1951. (S.I. 1951 No. 444.)
Utility Apparel (Men's and Boys' Shirts, Underwear and Nightwear) (Manufacture and Supply) Order, 1951. (S.I. 1951 No. 400.)
Utility Apparel (Men's, Youths' and Boys' Outerwear) (Manufacture and Supply) Order, 1951. (S.I. 1951 No. 398.)
Utility Braces (Marking and Manufacturers' Prices) Order, 1951. (S.I. 1951 No. 399.)
Utility Corsets (Manufacture and Supply) Order, 1951. (S.I. 1951 No. 401.)

BOOKS RECEIVED

Redgrave's Factories, Truck and Shops Acts. Supplement to Seventeenth Edition. By J. THOMPSON, M.A., of the Middle Temple and the Northern Circuit, Barrister-at-Law, and H. R. ROGERS, M.A., sometime Deputy Chief Inspector of Factories. 1951. pp. xi and 137. London: Butterworth and Co. (Publishers), Ltd. 10s. net.

The Newspaper Press Directory and Advertisers' Guide. 1951. pp. lvii and 601. London: Benn Brothers, Ltd. £2 2s. net.

Practical Points on Planning Law. Edited by H. J. BROWN, LL.M., D.P.A., L.A.M.T.P.I., Barrister-at-Law, Assistant Editor of the Journal of Planning Law. 1951. London: Sweet and Maxwell, Ltd. 15s. net.

Rayden's Practice and Law in the Divorce Division. Supplement to Fifth Edition. By F. C. OTTWAY, of the Probate and Divorce Registry, and J. E. S. SIMON, of the Middle Temple, Barrister-at-Law. 1951. pp. xxii and 239. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Principles of the Common Law. Sixth Edition. By A. M. WILSHERE, M.A., LL.B., of Gray's Inn, Barrister-at-Law, and B. CHEDLOW, of the Middle Temple and the Midland Circuit, Barrister-at-Law. 1951. pp. xlvii and (with Index) 846. London: Sweet & Maxwell, Ltd. £2 12s. 6d. net.

Jordan's Company Law and Practice. Nineteenth Edition. By L. J. MORRIS SMITH, of Gray's Inn, Barrister-at-Law, and S. BORRIE, Solicitor. 1951. pp. xvi and (with Index) 747. London: Jordan & Sons, Ltd. 30s. net.

Local Government and Local Finance. Ninth Edition. By Sir CECIL OAKES, C.B.E., sometime Clerk of the Peace and the County Council of East Suffolk, and W. L. DACEY, LL.B., Secretary of the County Councils Association, with a Foreword by Sir ARTHUR HOBHOUSE, Chairman of the Executive Council of the County Councils Association, 1946–50. pp. xv and (with Index) 497. London: Sweet & Maxwell, Ltd. £2 5s. net.

Emmet's Notes on Perusing Titles and on Practical Conveyancing. Thirteenth Edition. First Supplement. By J. GILCHRIST-SMITH, LL.M., Solicitor (Honours). 1951. pp. xv and 70. London: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

The Conveyancer and Property Lawyer. Volume 14 (New Series). Edited by DONALD C. L. CREE, M.A., of Lincoln's Inn, Barrister-at-Law, and HAROLD POTTER, LL.D., of Gray's Inn, Barrister-at-Law. 1950. pp. ix and (with Index) 477. London: Sweet & Maxwell, Ltd.

The Reform of the Law. Edited by GLANVILLE WILLIAMS, Quain Professor of Jurisprudence in the University of London. 1951. pp. (with Index) 224. London: Victor Gollancz, Ltd. 18s. net.

A Simple Explanation of the Legal Aid System. By DEREK H. HENE, of the Inner Temple and the South-Eastern Circuit, Barrister-at-Law, with a Foreword by The Rt. Hon. Sir NORMAN BIRKETT. 1951. pp. 56. London: London Express Newspapers, Ltd. (*Daily Express*). 2s. net.

Lindley on the Law of Partnership. Eleventh Edition. By HENRY SALT, K.C., M.A., LL.B., and HUGH E. FRANCIS, LL.B., of Gray's Inn and Lincoln's Inn, Barrister-at-Law, with a Foreword by the late The Rt. Hon. LORD UTHWATT. 1950. pp. cix and (with Index) 1,227. London: Sweet and Maxwell, Ltd. £6 6s. net.

The Justices' Handbook. Second Edition. By J. P. EDDY, K.C., Stipendiary Magistrate for East Ham and West Ham. 1951. pp. xiv and (with Index) 224. London: Stevens & Sons, Ltd. 12s. 6d. net.

Rhyming Relics of the Legal Past.—Supplement. By L. G. H. HORTON-SMITH, M.A., late Fellow of St. John's College, Cambridge, and of Lincoln's Inn, Barrister-at-Law. 1951. pp. 14. Published by the Author at 26 Rivercourt Road, Ravenscourt Park, London. 1s. 9d. net.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope

Joint Tenancy of Matrimonial Home—SALE BY DESERTING SPOUSE

Q. One difficulty arising out of matrimonial disputes which is much increased in importance in these days of housing shortage is that presented by a conveyance of the matrimonial home to husband and wife as joint tenants. There are, of course, a number of different financial arrangements which might have been made between parties when purchasing which would affect the ownership of the proceeds of sale, but the basic problem which often confronts us is how to protect a wife who has been left in the matrimonial home by a deserting husband where the house has been conveyed to the husband and wife as joint tenants. We have in mind, of course, the trust for sale which arises and the line of cases of which *Re Mayo* [1943] Ch. 302 is perhaps the most widely known. What can a wife in that position do? She is usually not willing to sell the house (even if she can claim half the proceeds of sale) because to do so would be to leave her without a home, at any rate if the sale is to be with vacant possession; but can she prevent such a sale?

A. Where the matrimonial home is held by husband and wife as joint tenants and the trust for sale arises, the desire of one of the parties to the marriage for a sale would, *prima facie*, override the wish of the other to retain (*Re Mayo* [1943] Ch. 302, cited in the question above). Nevertheless, we feel that in these circumstances the court might be willing to consider the reason for purchase, viz., the provision of a roof for both parties, and extend the principle of *Re Buchanan-Wollaston's Conveyance* [1939] Ch. 738, so as to protect a wife who has been deserted and who is the joint owner of the residence which the husband wishes to sell. Apart from any settlement by negotiation, if there are proceedings for divorce or nullity the Divorce Court has power to vary the trusts upon which the joint property is held, and this would enable the wife to seek protection by an application to vary. The court regards the purchase in joint names if made in contemplation or during the course of the marriage as a settlement within s. 192 of the Supreme Court of Judicature (Consolidation) Act, 1925, and in *Smith* v. *Smith* [1945] 1 All E.R. 584 the trusts were varied in favour of the wife in a case where the whole of the purchase money had been found by the husband.

Coroner's Custody of Documents

Q. X recently died by his own hand, and when the body was found there was also found a will, torn into several pieces. At the inquest (at which deceased was found to have died by his own hand whilst the balance of his mind was disturbed) the coroner required the pieces of the will to be handed in as exhibits and he has since declined to return them either to the executor, who had taken charge of them, or to the solicitors concerned, except on receiving certain undertakings. The coroner states that as the document has been put into a court of record as an exhibit, he can only return it to the "persons entitled," and he considers the residuary beneficiaries (various charities) may be considered to be persons entitled. Has the coroner exceeded his duties and jurisdiction in (*a*) taking the document as an exhibit, and (*b*) failing to return it to the executors? If so, what steps can be taken to prevent a recurrence in the future? In the present case the document will have to go before the court and we are applying for a subpœna requiring the coroner to bring it in. The parties concerned would not wish to be involved in proceedings against the coroner for damages.

A. A coroner's court being a court of record, any documentary evidence which is brought before the court is subject to the absolute control of the coroner and remains in his custody unless there is some statutory requirement that it shall be transmitted elsewhere (as in the case of depositions). This particularly applies to entire or fragmentary documents found on or near the body where persons have died in violent or suicidal circumstances, and it is the settled practice for coroners to take charge of such documents (whether tendered in evidence or not). If there is any doubt about the person to whom such documents should be delivered the proper course is for the coroner to retain them himself and only to produce them upon subpœna. If they are of a testamentary nature a subpœna to bring in the script would be a normal and usual proceeding. For the practice, see Jervis on Coroners, 8th ed., p. 128.

Title Made by Sole Trustee

Q. A and B were trustees for sale of Greenacre and were entitled to the proceeds of sale as tenants in common in equal shares. A died, and B alone afterwards purported to convey the property as *beneficial owner* by way of sale to C, D and E, who provided the money in equal shares. C and D then sold the property and conveyed same as trustees for sale (E having died in the meantime). We are acting for subsequent purchasers and have queried the conveyance by B. The solicitors acting for the vendors contend that B was competent to convey the legal estate in the property (the restriction imposed by s. 27 (2) of the Law of Property Act only affecting the receipt for sale money) and that as A had bequeathed her share in the proceeds of the sale of the property to B for life and then to her executors C, D and E absolutely, the conveyance by B was effectual, as the only persons who could dispute the title were C, D and E, who are estopped from doing so.

A. We agree with the vendor's solicitors' contention that there is nothing in s. 27 (2) of the Law of Property Act, 1925, or elsewhere, to prevent title being made by a sole trustee. Section 27 merely provides that the purchaser need not inquire into the equitable interest in the proceeds of sale if the purchase-money is paid to two trustees or a trust corporation. The expression in the conveyance that B conveyed as beneficial owner is probably not a statement of capacity but is merely a device for incorporating covenants for title (*Parker* v. *Judkin* [1931] 1 Ch. 475). As trustee, B was only able to dispose of the legal estate subject to the subsisting equities, and accordingly a purchaser is entitled to investigate the title to the proceeds of sale and to be satisfied that all equities have been extinguished by payment to the correct persons. In view of the bequests in A's will, it appears that this has been done and that the equitable beneficiaries are estopped, since any equities which they might set up would be contrary to their own title. In addition to the protection afforded by the full covenants for title given by B, the conveyance by him appears to be "to or under the direction of the persons interested in the proceeds of sale" within s. 23 of the Law of Property Act, 1925, thereby effectively concluding the trust for sale. Although the title is not in accordance with the curtain principles of the 1925 legislation and to that extent is to be deprecated, we are unable to see that it is on that account bad or at all unacceptable provided the equitable interests are fully abstracted.

Conveyance for Use as Village Hall—QUALIFICATIONS OF FUTURE TRUSTEES

Q. It is desired to convey a property for use as a village hall and that the trustees shall in future include the rector of the parish and the agricultural tenants of the two largest farms. It is intended that in the conveyance the present rector, the two farmers and a fourth party shall be the grantees. How can it be secured that future trustees shall include the rector and farming occupiers as mentioned above? It is assumed that a change of incumbency or tenancy will not operate *ipso facto* to bring the new incomer into the trust.

A. Accompanying the conveyance there will no doubt be a trust deed setting out the purposes for which the village hall is to be held, and the qualifications of future trustees can be specifically laid down in the trust deed. In the case of the rector, his office is a corporation sole, and if the conveyance is made to the present incumbent as rector and incumbent of the parish, his successor will automatically become trustee upon a change in the incumbency, although it would be desirable to declare in the trust deed that the rector is appointed as such and not in his private capacity. The farmers do not, however, enjoy the character of perpetual succession possessed by a corporation sole and will not automatically cease to be trustees on giving up their tenancies. It can be provided in the trust deed that ceasing to farm shall be a disqualification for a trustee who was originally a farmer, but to do so would not *ipso facto* remove him from his trusteeship. To ensure that future trustees shall include farmers it will be necessary to include in the trust deed a provision to the effect that trustees appointed in succession to Mr. A and Mr. B shall, if practicable, be persons farming at least X acres situate within the parish of sale.

NOTES AND NEWS

Honours and Appointments

Lt.-Col. O. B. GILES, solicitor, of Boston, has been appointed High Sheriff of Lincolnshire.

Mr. D. O. GRIFFITH, assistant solicitor to Caernarvonshire County Council since 1947, has been appointed senior solicitor to Denbighshire County Council.

The following appointments are announced in the Colonial Legal Service: Mr. A. R. BASTER, Principal Assistant Commissioner of Lands, Gold Coast, to be Deputy Commissioner of Lands, Gold Coast; Mr. D. E. JACKSON, Puisne Judge, Windward and Leeward Islands, to be Chief Justice, Windward and Leeward Islands; Mr. T. W. JONES, Assistant Registrar of Titles and Conveyances, Uganda, to be Deputy Registrar of the High Court, Uganda; Mr. A. G. C. SOMERHOUGH, Crown Counsel, Kenya, to be Deputy Public Prosecutor, Kenya; Mr. L. A. W. ORR, late President of the District Court, Palestine, to be Assistant Attorney General, Bahamas; Mr. J. S. MANN to be Resident Magistrate, Tanganyika; and Mr. F. PEARSON to be Crown Counsel, Kenya.

Miscellaneous

ANGLO-GERMAN PATENTS

An agreement has been concluded between the British Government and the Government of the Federal Republic of Germany whereby the time for making belated applications for United Kingdom patents with priority based on a corresponding application deposited in a filing office at Damstadt or Berlin may be extended until a date not later than 31st May, 1951, provided the application so deposited continued to be dealt with by the Patent Office of the Federal Republic. Extensions have been granted by the Government of the Federal Republic for making applications in that country founded upon applications in the United Kingdom. The agreement is given effect by the Patents (Extension of Time) (Federal Republic of Germany) Rules, 1951.

OBITUARY

MR. M. BATES

Mr. Matthew Bates, solicitor, of Sunderland, died on 12th March, aged 46. Mr. Bates, who was blind from birth, was admitted in 1934.

MR. P. H. BERRY

Mr. Percy Harold Berry, solicitor, of Brentford, died on 2nd March. He was admitted in 1928.

MR. C. H. LAVERTY

Mr. Charles H. Laverty, solicitor to Monaghan County Council since 1927, died recently. He was President of the Incorporated Law Society of Ireland.

MR. H. W. MICHELMORE

Mr. Henry William Michelmore, solicitor, of Exeter, has died at the age of 86. Admitted in 1887, he was deputy Clerk of the Peace for Devon for many years and was twice Mayor of Exeter. He was formerly chairman of the Solicitors' Benevolent Association.

SOCIETIES

Among those present at the dinner of the BRADFORD INCORPORATED LAW SOCIETY at the Great Northern Victoria Hotel, Bradford, on 16th March, were the Deputy Lord Mayor of Bradford (Councillor Angus Crowther), Mr. Kenneth W. Parkinson (President of the Bradford Chamber of Commerce), Mr. R. S. Bishop (Bradford City Coroner), Mr. A. R. B. Priddin (Deputy Coroner), Miss Mary E. Sykes (President of the Huddersfield Incorporated Law Society), Mr. J. Stanley Snowden and Mr. A. B. Boyle.

The annual general meeting of the CHESTER AND NORTH WALES INCORPORATED LAW SOCIETY was held at Chester Castle on 19th March, 1951. The following officers were appointed for the ensuing year: President, Mr. P. Timperley, of Crewe; Vice-President, Mr. H. Potts, of Chester; Treasurer, Mr. H. L. Birch, of Chester; Secretary, Mr. R. E. Ball, of Chester. The proceedings included the presentation of an inscribed silver salver to Mr. Cyril O. Jones, of Wrexham, the Secretary for nearly twenty-five years of the former Poor Persons' Committee, in recognition of his work during that period, and the presentation of a wrist-watch to Miss Griffiths, his clerk.

The annual dinner was held at the Grosvenor Hotel, Chester, after the meeting. The official guests included Sir L. S. Holmes, President of The Law Society, The Right Worshipful Alderman P. H. Lawson, Mayor of Chester, His Honour Judge H. Emlyn Jones, Mr. E. O. Glover, chairman of the Cheshire County Council, and Dr. J. M. Dobie, president of the Chester and North Wales Medical Society. Seventy-nine members and guests were present.

The Master of the Rolls, The Rt. Hon. Sir Raymond Evershed, was chairman at the UNITED LAW CLERKS' SOCIETY'S 119th anniversary dinner, held on 12th March, at the Connaught Rooms, London. Lady Evershed accompanied him, and he was supported by the Rt. Hon. Lord Morton of Henryton, Lord Justice Cohen, Mr. Justice Lynskey and Lady Lynskey, Mr. Justice Harman, Sir Godfrey Russell Vick, K.C., and many other well known members of the profession and their ladies. A company of 359 persons sat down to dinner. After the loyal toasts had been honoured, the chairman proposed the toast of "The Society." In the course of his speech, Sir Raymond Evershed referred to the responsibilities borne by barristers' clerks and solicitors' clerks and said these clerks had in their keeping the integrity and the honour of the legal profession. That was something that was very precious. The hope and expectation that the rest of mankind would hold the law in respect depended upon this above all else, that those who did the ordinary workaday tasks for the law should hold aloft the high standards which were necessary to preserve its traditions. He continued: "In these days we are all members of what is known as the welfare state. That entitles us when we reach a certain age to receive 26s. a week. That is something, but it would be idle to pretend that for those who have to fight the kind of battle that the clerks of barristers and solicitors have to fight it is anything like enough. It is undeniable that to-day few can afford to save even for their own old age and none can hope to make any adequate testamentary provision for those who have served them faithfully in their profession, and yet, of course, all that we get and all that we can leave and give to others we derive from our profession. Therefore, ladies and gentlemen, it is more than ever necessary that societies such as this should be able to provide those extra things that make life worth living which cannot be got from 26s. a week." Sir Raymond concluded with the mention of the Society's new Holloway Fund, which already had 150 members. The response for the Society was made by Mr. John Smeaton, deputising for Mr. Harry Smerdon, the Treasurer, who was recovering from an illness. The toast of "The Secretary" was submitted by Mr. Edward Jagot, the chairman of the Society's Committee of Management. Mr. Jagot explained that Mr. Morris Reed had served the Society for fifty years, had been Secretary for thirty-eight years, and would soon be retiring from this office. He referred in felicitous terms to Mr. Reed's services to the Society, and presented him with a cheque for a substantial sum which members had contributed to a testimonial fund. In replying, Mr. Reed expressed his thanks for the warm reception given to this toast; he was grateful for Mr. Jagot's assurance of the value of his services, and greatly appreciated the gifts of so many members which had resulted in the presentation of a handsome cheque. Mr. Reed said that he had always regarded it as an honour to serve such a Society; his work had afforded him many pleasures and had given him many valued friendships. The other toasts were "The Ladies and Our Guests" and "The Chairman," and donations received and promised were announced at a figure of £860.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: Inland £3 15s., Overseas £4 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

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